

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDREW C. GLOVER; JOHNNY EUGENE
GLOVER a/k/a JOHNNY E. GLOVER
a/k/a JOHNNY GLOVER; COUNTY
TREASURER, Tulsa County, Oklahoma;
and BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

NOV 30 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 90-C-647-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 30th day
of November, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Andrew C. Glover and Johnny Eugene
Glover a/k/a Johnny E. Glover a/k/a Johnny Glover, appear not,
but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Andrew C. Glover,
acknowledged receipt of Summons and Complaint on August 6, 1990;
that the Defendant, Johnny Eugene Glover a/k/a Johnny E. Glover
a/k/a Johnny Glover was served with Summons and Complaint on
September 17, 1990; that Defendant, County Treasurer, Tulsa

County, Oklahoma, acknowledged receipt of Summons and Complaint on August 1, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 2, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on August 22, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 22, 1990; and that the Defendants, Andrew C. Glover and Johnny Eugene Glover a/k/a Johnny E. Glover a/k/a Johnny Glover, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seventeen (17), Block Thirteen (13),
CARBONDALE, Tulsa County, State of Oklahoma,
according to the recorded plat thereof.

The Court further finds that on March 11, 1987, the Defendant, Andrew C. Glover, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$15,000.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Andrew C. Glover, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 11, 1987, covering the above-described property. Said mortgage was recorded on March 16, 1987, in Book 5008, Page 411, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Andrew C. Glover, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Andrew C. Glover, is indebted to the Plaintiff in the principal sum of \$14,697.37, plus interest at the rate of 8.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$30.00 (\$20.00 docket fees, \$10.00 fee for service of Summons and Complaint).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Andrew C. Glover, in the principal sum of \$14,697.37, plus

interest at the rate of 8.5 percent per annum from October 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.28% percent per annum until paid, plus the costs of this action in the amount of \$30.00 (\$20.00 docket fees, \$10.00 fee for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:


In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-647-E

PP/esr

The Court, being fully advised and having examined the court file, finds that the Defendant, Rodger Alan Gibson, was served with Summons and Complaint on Septmeber 28, 1990; that the Defendant, Dana Leann Gibson a/k/a Dana LeAnn Gibson, was served with Summons and Complaint on September 28, 1990; that Defendant, County Treasurer, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on June 1, 1990; and that Defendant, Board

of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on May 29, 1990.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Disclaimer on June 4, 1990; and that the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

The South Half (S/2) of Lot Six (6), Block Thirty-seven (37), in the ORIGINAL TOWN OF MOUNDS, Creek County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 17, 1987, the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$27,000.00, payable in monthly installments, with interest thereon at the rate of 10 percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, executed

and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 17, 1987, covering the above-described property. Said mortgage was recorded on August 17, 1987, in Book 224, Page 1816, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, are indebted to the Plaintiff in the principal sum of \$26,727.22, plus interest at the rate of 10 percent per annum from May 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$35.92 (\$20.00 docket fees, \$7.92 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson,

in the principal sum of \$26,727.22, plus interest at the rate of 10 percent per annum from May 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.2% percent per annum until paid, plus the costs of this action in the amount of \$35.92 (\$20.00 docket fees, \$7.92 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Rodger Alan Gibson and Dana Leann Gibson a/k/a Dana LeAnn Gibson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action
accrued and accruing incurred by the

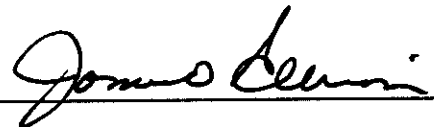
Plaintiff, including the costs of sale of
said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.



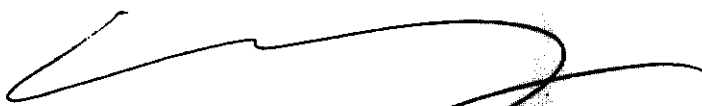
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-463-E
KBA/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 30 1990

ALLSTATE INSURANCE COMPANY,

Plaintiff,

vs.

JOHN M. WHEATLEY, TRACY L.
RICHARDSON and EDWARD M.
WHEATLEY,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-372-E

JUDGMENT

This action is before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff Allstate Insurance Company recover judgment of the Defendants, that the Allstate policies issued to Edward M. Wheatley and John M. Wheatley for the liability which they may incur as a result of the counterclaim asserted by Richardson in the state court action, and Allstate has no duty to defend John M. Wheatley or Edward M. Wheatley in the state court action.

ORDERED this 29th day of November, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID BESS,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

No. 90-C-645-E

F I L E D

NOV 30 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

At issue before the Court is Defendant's motion pursuant to 12(b)(6) characterized as a 12(b)(1) motion to dismiss for lack of jurisdiction over the subject matter.

This action was commenced in the District Court for Tulsa County on June 25, 1990 and subsequently removed to this Court. Plaintiff alleges breach of contract. Defendant replies to Plaintiff's allegations by stating that Plaintiff's claims for relief are preempted by the provisions of the Railway Labor Act, 45 U.S.C. §§151, et seq. ("RLA"). In particular, Defendant states that Plaintiff was at all relevant times, a member of the Transport Workers Union of America. AFL-CIO, Local 514 ("Union"), the sole and exclusive bargaining agent for Plaintiff under the RLA.

The purpose of the RLA is to provide employers and employees with a prompt, orderly and efficient method of resolving disputes between them. The RLA §151(A) states, in part that the purposes of the Act are:

... (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to

provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of a grievance covering rates of pay, rules, or working conditions.

There is a distinction between major and minor labor disputes under the RLA. United Trans. Union v. Penn Central Trans. Co., 505 F.2d 542, 543 (3rd Cir. 1974). Major disputes arise out of the formation or change of a collective agreement while minor disputes involve interpretation or application of a collective agreement. Plaintiff's claims relate to the interpretation of the contract between Plaintiff's Labor Organization and the Defendant. As such, Plaintiff's claims clearly constitute a "minor dispute." United Trans. Union, at 543 citing Baker v. United Trans. Union, 455 F.2d 149, 154 n. 11 (3rd Cir. 1971).


The RLA compels arbitration of minor labor disputes. Andrews v. Louisville and Nashville R.R. Co., 406 U.S. 320, 92 S.Ct. 1562, 32 L.Ed.2d 95 (1972). In Andrews, the United States Supreme court ruled that grievances must follow the procedure set forth in the RLA. This procedure subjects minor disputes to binding arbitration of an area adjustment board. Plaintiff's claims were thus submitted to the Systems Board of Adjustment.

Since Plaintiff's claims were properly submitted and decided by the Systems Board of Adjustment, there is no basis for this Court to review the System Board's decision on the merits. As stated in Rossi v. TransWorld Airlines, Inc., 507 F.2d 404, 405 (9th Cir. 1974), "[c]ourts will not review the merits of arbitration awards so long as the award is based properly upon the

applicable collective bargaining agreement."

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is granted.

ORDERED this 29TH day of November, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OKLAHOMA

JOHN DENNIS and CRYSTAL,
DENNIS, husband and wife,
individually and as next friend
of JULIE RAY DENNIS, a minor,
Deceased,

Plaintiffs,

vs.

HOLLANDER HOME FASHIONS
CORPORATION, a New Jersey
Corporation, and WAL-MART
STORES, INC., a Delaware
Corporation,

Defendants.

Case No. 90-C-998-B

NOV 30 1990
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiffs, by and through their attorneys,
Barber & Bartz, and pursuant to Rule 41(a)(1) of the Federal
Rules of Civil Procedure hereby dismiss the Defendants, Hollander
Home Fashions Corporation and Wal-Mart Stores, Inc., without
prejudice.

BARBER & BARTZ
Attorneys for Plaintiff

By: Robert J. Getchell
Robert J. Getchell, OBA #11317
One Ten Occidental Place
110 W. 7th St., Suite 200
Tulsa, OK 74119
(918) 599-7755

CERTIFICATE OF MAILING

I, Robert J. Getchell, do hereby certify that on the 30th
day of November, 1990, I mailed a true and correct copy of the
above and foregoing Dismissal to Jerry D. Stritzke and Andrew B.
Morsman of Best, Sharp, Holden, Sheridan & Stritzke, 808 Oneok
Plaza, 100 W. 5th St., Tulsa, Oklahoma, 74103, with proper
postage fully prepaid thereon.

Robert J. Getchell
Robert J. Getchell

RJG/sn
1575-01
DIS-HOLLAN

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JEFFREY ALAN GRAFTON a/k/a
JEFFREY A. GRAFTON a/k/a
JEFFREY GRAFTON; REGINA F.
GRAFTON a/k/a REGINA FAITH
GRAFTON a/k/a REGINA GRAFTON;
MIDAMERICA FEDERAL SAVINGS &
LOAN ASSOCIATION; AMERICAN
NATIONAL BANK AND TRUST CO. OF
SAPULPA, OKLAHOMA; CHILDREN'S
MEDICAL CENTER; COUNTY TREASURER,
Creek County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Creek
County, Oklahoma; BANK OF
OKLAHOMA, N.A., TULSA, OKLAHOMA,
as Trustee for the Creek County
Home Finance Authority; MODERN
AMERICAN MORTGAGE CORPORATION;
and UNION NATIONAL BANK OF LITTLE
ROCK,

Defendants.

FILED

NOV 30 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 88-C-456-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 30th day
of Nov., 1990, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Kathleen Bliss Adams,
Assistant United States Attorney, and the Defendants, Jeffrey
Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and
Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina
Grafton, appeared neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, Route 2, Box 188A, Sapulpa, Oklahoma 74066, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on January 23, 1989, in favor of the Plaintiff United States of America, and against the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, with interest and costs to date of sale is \$44,715.69.

The Court further finds that the appraised value of the real property at the time of sale was \$16,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered January 23, 1989, for the sum of \$14,168.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on October 25, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a

Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton
a/k/a Regina Grafton, as follows:

Principal Balance as of 1/23/89	\$32,203.74
Interest	10,040.09
Late Charges to Date of Judgment	195.00
Appraisal by Agency	675.00
Management Broker Fees to Date of Sale	984.25
Abstracting	140.40
Publication Fees of Notice of Sale	160.21
Court Appraisers' Fees	105.00
Taxes	<u>212.00</u>
TOTAL	\$44,715.69
Less Credit of Appraised Value	- <u>16,000.00</u>
DEFICIENCY	\$28,715.69

plus interest on said deficiency judgment at the legal rate of 7.28 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Jeffrey Alan Grafton a/k/a Jeffrey A. Grafton a/k/a Jeffrey Grafton and Regina F. Grafton a/k/a Regina Faith Grafton a/k/a Regina Grafton, a deficiency judgment in the amount of \$28,715.69, plus interest at

the legal rate of 7.288 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NORTHERN PIPELINE, LTD., a
California limited partnership;
FALLON COUNTY PIPELINE, LTD.,
a California limited partnership;
MONTANA PIPELINE, LTD., a
California limited partnership;
SODA CREEK PIPELINE, LTD., a
California limited partnership;
AMERICAN ENERGY, INC., a
California corporation;

Plaintiffs,

vs.

INTERSEARCH CORPORATION, an
Oklahoma corporation; INTERSEARCH
GAS CORPORATION, an Oklahoma
corporation; HILLTOP PIPELINE
SYSTEMS, an entity;

Defendants.

Case No. 90-C-0075 E

FILED

NOV 30 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW on this 29th day of November, 1990, the above-referenced matter comes on before this Court on the application of Plaintiff Fallon County Pipeline, Ltd. for dismissal with prejudice of its claims against the Defendants in this case. The Court finds that good cause has been shown and the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the claims of Fallon County Pipeline, Ltd. against the Defendants are dismissed with prejudice to the refiling. This order of dismissal does not affect the pending claims of the remaining Plaintiffs in this matter.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEONARD DEWAINE WHITE,

Petitioner,

v.

U.S. PAROLE COMMISSION, et al,

Respondents.

90-C-506-C

FILED

NOV 30 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

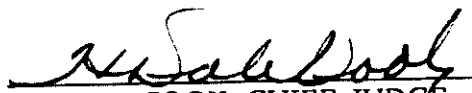
The Court has for consideration the Report and Recommendation of the United States Magistrate filed October 23, 1990 in which the Magistrate recommended that this case be transferred to the Western District of Oklahoma for further proceedings.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that this case is to be transferred to the Western District of Oklahoma for further proceedings.

Dated this 29 day of Nov., 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Entered
FILED
1990
Clerk
COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE F&M BANK & TRUST COMPANY,
an Oklahoma banking corporation,

Plaintiff,

v.

JACK WILDER, an individual,

Defendant.

No. 90-C-220-B ✓

ORDER

Before the Court is the Motion to Reconsider this Court's Order of October 4, 1990, filed by the plaintiff, The F&M Bank & Trust Company (F&M). In that order the Court denied F&M's Motion for Summary Judgment awaiting the Oklahoma Supreme Court's decision in *Goss v. Trinity Savings & Loan Ass'n*, No. 67,298 (Okla. App. filed August 23, 1988). In *Goss*, the Oklahoma Supreme Court will address the issue of whether a variable interest rate on a note which is tied to an external index defeats the negotiability of the note under Okla. Stat. tit. 12A, §3-104. Because F&M moved for summary judgment as the holder of a negotiable instrument with a variable interest rate, the Court denied the motion, pending the Supreme Court's decision in *Goss*.

F&M now argues that the Court should reconsider its order because the subject note, though non-negotiable, is a "clear legal obligation . . . subject only to such defenses as defendant might

have against the payee,"¹ and the defendant has failed to state any defense to his obligation on the note. In other words, summary judgment should be granted whether or not F&M is a holder in due course, because the defendant has presented no personal defense.

Summary judgment pursuant to Fed. R. Civ. P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Widon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

The defendant states that the following are genuine issues of material fact that make summary judgment inappropriate: 1) whether the agreement and practice of the defendant and Utica Bank modified the terms of the note; 2) whether other notes, specifically note #79965, affect or supersede the subject note; and 3) how to compute the amount due and owing on the note.

Defendant argues that because it was the practice of the payee bank, Utica National Bank & Trust Co. (Utica Bank), to extend the

¹ *James Talcott, Inc. v. Finley*, 389 P.2d 988, 992 (1964).

note's maturity date, a genuine issue of material fact exists as to the payment term of the note now held by F&M. The extensions to which the defendant refers were a series of separate written note modifications extending the maturity date and retaining all other terms of the note. The last such extension granted the defendant by Utica Bank set the maturity date as January 12, 1990. F&M claims default from that date. It is unclear to the Court what the defendant alleges is a genuine issue of material fact. No further written extensions were granted the defendant either by Utica Bank or F&M. It is undisputed that the maturity date on the subject note was January 12, 1990 and that the defendant did not pay the amount due. The Court can only conclude that the defendant was in default on the note as of January 12, 1990.

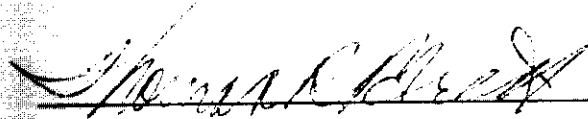
The defendant also claims that other notes "may well impact on F&M's claims here." The only evidence that the defendant provides in support of this claim is the handwritten notation, "note #73737," (referring to the subject note) on note #79965, which the defendant claims indicates that note #79965 may supersede the subject note. This evidence alone, however, is not sufficient to raise a material issue of fact as to the defendant's legal obligation under the subject note.

Defendant finally argues that summary judgment should not be granted because the amount of interest due on the note cannot be determined: the note states that the rate of interest is to be calculated as one per cent (1%) in excess of Utica Bank's base rate, and at the time of maturity, Utica Bank no longer existed.

F&M, however, is correct in stating that this is a matter of law and not an issue of fact and does not defeat summary judgment.

For the above reasons, the Court grants F&M's Motion to Reconsider and sustains F&M's Motion for Summary Judgment as to the defendant's liability on the note. In order to determine the amount of interest due on the note, the Court requests the parties to brief this issue, citing relevant law, to aid the Court in its determination. Plaintiff's brief is to be submitted by December 10, 1990 and defendant's brief by December 17, 1990.

IT IS SO ORDERED, this 29th day of November, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

107 81 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LARRY DON WESLEY MAYNARD,

Plaintiff,

v.

BILL SELLERS and MONTE STROUT,

Defendants.

90-C-832-B ✓

ORDER

This order pertains to plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Docket #2)¹, the Special Appearance and Motion to Dismiss of defendant Monte Strout (#5), and the Special Appearance and Motion to Dismiss of Defendant Sellers (#7). The Motions to Dismiss should be granted.

Plaintiff alleges that the defendants violated his constitutional rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. He alleges that Bill Sellers ("Sellers") and Monte Strout ("Strout"), acting in their capacities as private attorneys, conspired to commit fraud on him.

Plaintiff's claims of fraud arise out of a civil suit brought by plaintiff for personal injuries. Sellers, acting as a private attorney, represented plaintiff in the personal injury suit. Plaintiff alleges that Sellers induced him to sign a contract for the sale of a business with the payment for the business to be derived from plaintiff's personal injury recovery. When plaintiff became dissatisfied with Sellers, he allegedly fired Sellers and hired Strout to represent him in the personal injury suit. Plaintiff contends that Strout convinced him


¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

to pay Sellers to settle a contract. He also claims that Sellers and Strout conspired to deprive him of his personal injury funds.

Because Sellers and Strout were acting only as private attorneys and their actions were not chargeable to the state, the action against them should be dismissed. To maintain an action under 28 U.S.C. § 1983, a party must show that the defendant was acting under the color of state law. Bernard v. Young, 720 F.2d 1188, 1188-89 (10th Cir. 1983). A private attorney, whose conduct is chargeable to the state, might be a state actor. Id. at 1189. However, "private attorneys, by virtue of being officers of the court, do not act under color of state law within the meaning of section 1983". Id. Plaintiff has not demonstrated that Sellers' and Strout's alleged conduct is chargeable to the state.

The Motions to Dismiss of defendants Monte Strout and Bill Sellers should be and are granted, because the Court lacks subject matter jurisdiction.

Dated this 29th day of Nov, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

EDWARD L. JOHNSON a/k/a EDWARD)
LEE JOHNSON; PATRICIA JOHNSON)
a/k/a PATRICIA ANN JOHNSON;)
TULSA ADJUSTMENT BUREAU, INC.;)
COUNTY TREASURER, Tulsa County,)
Oklahoma; and BOARD OF COUNTY)
COMMISSIONERS, Tulsa County,)
Oklahoma,)

Defendants.)

CIVIL ACTION NO. 88-C-628-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 29th of Nov., 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 4th day of September, 1990, and a copy of the Motion was mailed to Edward L. Johnson a/k/a Edward Lee Johnson, c/o Jess Dunn Correctional Center, Drawer AA, Taft, Oklahoma 74463 and Patricia Johnson a/k/a Patricia Ann Johnson, 1742 East 51st Street North, Tulsa, Oklahoma 74130, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Phil Pinnell, Assistant United States Attorney, and the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on May 25, 1989, in favor of the Plaintiff United States of America, and against the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, with interest and costs to date of sale is \$56,814.29.

The Court further finds that the appraised value of the real property at the time of sale was \$4,800.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 25, 1989, for the sum of \$6,668.00 which is more than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 5th day of November, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, as follows:

Principal Balance as of 5/25/89	\$41,696.07
Interest	13,008.32
Late Charges to Date of Judgment	538.24
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	362.95
Abstracting	201.00
Publication Fees of Notice of Sale	164.71
Appraisers' Fees	105.00
Taxes	238.00
TOTAL	\$56,814.29
Less Credit of Sales Proceeds	- 6,668.00
DEFICIENCY	\$50,146.29

plus interest on said deficiency judgment at the legal rate of 7.28 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the sale proceeds of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Edward L. Johnson a/k/a Edward Lee Johnson and Patricia Johnson a/k/a Patricia Ann Johnson, a deficiency judgment in the amount of \$50,146.29, plus interest at the legal rate of 7.28 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BREII

UNITED STATES DISTRICT JUDGE

PP/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

THOMAS ANDREW BIAS,

Petitioner,

v.

R. MICHAEL CODY, et al,

Respondents.

NOV 29 1990

89-C-300-E

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

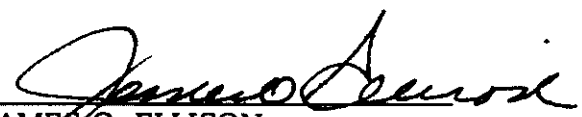
The Court has for consideration the Report and Recommendation of the United States Magistrate filed October 23, 1990 in which the Magistrate recommended that the Motion to Dismiss Petition for Writ of Habeas Corpus be dismissed, without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Motion to Dismiss Petition for Writ of Habeas Corpus is dismissed, without prejudice.

Dated this 29th day of November, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED
11-29-90

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARCUS D. MADDEN,

Petitioner,

v.

JAMES L. SAFFLE, WARDEN, et al,

Respondents.

93-C-635-B

ORDER

Now before the court are petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #1)¹, his Amended Petition (#5), respondents' Response to Petition for Writ of Habeas Corpus (#6), petitioner's Reply to Respondent's Response to Petition for Writ of Habeas Corpus (#7), and petitioner's Appendix (#8). The background of this matter was summarized by Magistrate John Leo Wagner in his Order of August 1, 1990 (#4), and is incorporated herein by reference.

After having exhausted the available state remedies, petitioner is entitled to the court's consideration of his petition.

Insufficient Evidence Claim

In his first claim, petitioner alleges that there was insufficient evidence admitted at trial to convict him. Such a challenge to the sufficiency of the evidence to sustain a state conviction raises no federal constitutional question and cannot be considered in federal habeas corpus proceedings. Sinclair v. Turner, 447 F.2d 1158, 1161 (10th Cir. 1971), cert.

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den., 405 U.S. 1048 (1972). The court notes that the evidence leading to petitioner's conviction for forcible sodomy after former conviction of a felony included the victim's testimony and testimony of others that the victim had a conflict with petitioner prior to the attack and that the victim did not show up for work the day of the attack.

Prosecutorial Misconduct Claim

In his second claim, petitioner asserts that the prosecutor was guilty of misconduct, because he "improperly invoked societal alarm" by his closing argument asking the jury to "deliver a message to the inmates" in Oklahoma prisons that such conduct as sodomy between inmates would not be countenanced.² Defense counsel objected to the remark and the objection was overruled. The courts have held that "every slight excess of the prosecution does not require that a verdict be overturned and a new trial ordered." United States v. Coppola, 526 F.2d 764, 772 (10th Cir. 1975). The Supreme Court has ruled that,

² The part of the closing argument objected to is as follows:

That's the rule of law, and I think from this evidence, if you look at it, and look at all of it, and use your common sense, the demeanor, what anybody has to lose, what the motives are, there is evidence presented to you that you can find these two defendants guilty beyond a reasonable doubt, and if you so find, I think there is a crime of forcible sodomy, and if you so find, I think there's evidence that you can find them guilty of forcible sodomy after former conviction of a felony, and if you so find, I do not want you to tack on time because they're black, because they're armed robbers, because they're in the penitentiary, but because they committed this crime, and if you so find, then I want you to tack on some time, and I'm going to ask you if you so find, that you tack on some time, because Rocky Ostrander testified when he got down to Granite everybody knew about the incident at Conners, so there's an underground system in the penitentiaries of Oklahoma where news travels fast, so if you so find these defendants guilty of forcible sodomy after former conviction of a felony, I want you to deliver a message, and let it travel --

MR. HALL: Your Honor, I need to object to that. That's improper form of argument.

THE COURT: Be overruled. You're allowed an exception.

MR. HALL: May I have an exception?

MR. BOGGS: I want you to tack on some time, and I want you to deliver a message to the inmates in the prisons of the State of Oklahoma, that the good citizens of Osage County in this State are not -- because they may have a relative going to prison, and they don't want this kind of stuff happening in their prisons....

(Transcript of Jury Trial ("TR"), June 18-21, 1984, pg. 442, line 17, to pg. 443, line 22).

to constitute a due process violation, prosecutorial misconduct must be "of sufficient significance to result in the denial of the defendant's right to a fair trial." United States v. Bagley, 473 U.S. 667, 676 (1985) (quoting United States v. Agurs, 427 U.S. 97, 108 (1976)). "A defect of constitutional proportions is not to be found in any but egregious cases." Darden v. Wainwright, 699 F.2d 1031, 1034 (11th Cir. 1983). The prosecutor's comments here were mild compared to those of the prosecutor in Darden, in which the Eleventh Circuit found that the comments did not deny Darden a fundamentally fair trial. The comments here certainly did not result in the denial of due process.

Petitioner also claims the prosecutor deprived him of his right to examine exculpatory evidence, because he was not furnished with the names of two people the state planned to call as witnesses until the morning of the trial. Petitioner alleges he tried to obtain the witnesses for his own case, but was unable to do so on such short notice. The witnesses were Charles Miller, a guard at the prison who was on duty at the time of the attack, and Linda Cisco, a psychological counselor at the prison. However, Miller's logs were introduced at trial, showing he had made no notation of anything unusual the morning of the alleged attack (TR 361). Also, testimony was introduced at trial that the victim of the attack visited with Cisco the same day, but did not tell Cisco that he had been sodomized (TR 364-365). Thus the jury heard the information favorable to petitioner that would have been brought out had the two been located for trial.

The Supreme Court found in Brady v. State of Maryland, 373 U.S. 83, 87 (1963), that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to the guilt or punishment,

irrespective of the good faith or bad faith of the prosecution." However, "[t]he rationale underlying Brady is not to supply a defendant with all the evidence in the Government's possession which might conceivably assist the preparation of his defense, but to assure that the defendant will not be denied access to exculpatory evidence only known to the Government." United States v. LeRoy, 687 F.2d 610, 619 (2nd Cir. 1982).

In order to demonstrate a due process violation, petitioner must show that the prosecutor suppressed the names of the two witnesses and that this purported evidence was material to his guilt or punishment. The names of the two witnesses were known by petitioner prior to trial, and the nature of their testimony, which came out through other testimony at trial, certainly was not material to petitioner's guilt or punishment. There is no merit to petitioner's prosecutorial misconduct claim.

Non-Representative Jury Claim

In his third ground for relief, petitioner claims that no blacks were included in the jury panel, so the jury was not drawn from a representative cross-section of the community.

Far from asserting that the racial composition of a defendant's jury must reflect the racial composition of the community, the Supreme Court has reaffirmed that defendants have no right to a jury composed in whole or in part of persons of their own race. Batson v. Kentucky, 476 U.S. 79 (1986). Petitioner's demographic data and statements here are insufficient to support an inference that the prosecutor purposefully discriminated in selecting the jury. Batson requires that the petitioner present evidence of the prosecutor's use of preemptory challenges to remove veniremen on account of race. Id. at 84. Absent

such a showing, the court cannot presume that the racial composition of petitioner's jury reflects a denial of due process. Appellant's attorney admitted in his post-trial motions that there were no blacks on the venire panel, so there was no systematic exclusion of blacks. There is no merit to this claim.

Ineffective Assistance of Counsel Claim

In his fourth ground for relief, petitioner claims that he was denied effective assistance of counsel. He claims his attorney had a "conflict of interest" in representing "two defendant's [sic] who had opposing wishes", did not have enough time to prepare for trial, and failed to object to the composition of the jury.

In Strickland v. Washington, 466 U.S. 668 (1984), the Court announced a two-prong test to determine if counsel's performance was deficient. The Court held:

First the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687.

The court finds that there is no evidence in the record that the two defendants in petitioner's trial had opposing values, since both were found guilty of acts of sodomy on the victim in one incident and both sought to prove their innocence. There was no apparent conflict in their dual representation. There is also no evidence in the record that petitioner's attorney was unprepared for trial. He put on seven witnesses and was thorough in examination and cross-examination.

Counsel's performance also was not deficient because he failed to object to the alleged absence of blacks on the jury or the venire. Petitioner did not have a constitutional right to a jury with blacks or other ethnic groups. He only had a right to a fair and impartial jury. See Irwin v. Dowd, 366 U.S. 717 (1961).

In addition, petitioner has failed to show that he was prejudiced by counsel's "conflict of interest", failure to prepare, and failure to object to the composition of the jury. The Court in Strickland, stated that the petitioner must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. The court finds that petitioner has failed to show he was denied a fair trial. Adequacy of counsel is not measured by hindsight or success. United States v. Nelson, 582 F.2d 1246, 1250 (10th Cir. 1978), cert. den. 439 U.S. 1079 (1979).

Denial of Continuance Claim

Petitioner claims that the trial court erred in refusing to grant a motion for continuance, making it impossible to call Charles Miller, the prison guard discussed earlier, to testify that he had not noticed anything unusual the morning of the alleged attack, that he did not see defendants in the victim's unit that morning, and that he unlocked the victim's cell after the time of the alleged attack. As already stated, Miller's logs were introduced at trial, showing he had noted nothing unusual the morning of the alleged attack. Since most of the evidence petitioner wanted to introduce was introduced by other means, and the grant of a continuance lies within the trial court's discretion, abuse of that

discretion must be shown to sustain a claim for habeas corpus relief. Goodwin v. State, 730 P.2d 1202, 1204 (Okla.Crim.App. 1986). Such abuse has not been shown.


Denial of Severance Claim

Petitioner claims that the trial court erred in denying his motion for severance, and petitioner was prejudiced when his co-defendant admitted he was in the cellblock where the victim was housed the morning of the attack. The trial court has discretion to grant a motion for severance. Cooks v. State, 699 P.2d 653, 658 (Okla.Crim.App.), cert. den. 474 U.S. 935 (1985). Petitioner must show clear prejudice resulting from his joinder with the other defendant to sustain a claim for habeas corpus relief. United States v. Strand, 617 F.2d 571, 575 (10th Cir. 1979), cert. den. 449 U.S. 841 (1980). The court concludes that, although petitioner's co-defendant admitted being in the unit where the victim was housed on the date the assault occurred, he denied the assault, and this did not result in prejudice to petitioner. There is no merit to this claim.

Conclusion

The court concludes that petitioner has failed to state any claim that would entitle him to habeas corpus relief. His application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is denied.

Dated this 29th day of Nov., 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES, TRUSTEES,
SUCCESSORS AND ASSIGNS OF HAZEL
BANKS a/k/a HAZEL MAE BANKS a/k/a
HAZEL WILLIS BANKS, Deceased;
JO ANN BRUNER; COUNTY TREASURER,
Tulsa County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma; and
BERNETT BANKS,

Defendants.

FILED

NOV 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-617-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day
of Nov, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, Tulsa County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Jo Ann
Bruner, Bennett Banks, and The Unknown Heirs, Executors,
Administrators, Devisees, Trustees, Successors and Assigns of
Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks appear
not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint

on July 19, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1990.

The Court further finds that the Defendants, Jo Ann Bruner, Bennett Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 10, 1990, and continuing to October 15, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jo Ann Bruner, Bennett Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known addresses of the Defendants, Jo Ann Bruner, Bennett

Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 6, 1990; that the Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 6, 1990; and that the Defendants, Jo Ann Bruner, Bernett Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, have failed to answer

and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block Fifty-three (53), Valley View Acres Third Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that Hazel Banks and Jo Ann Bruner became the record owners of the real property involved in this action by virtue of a Warranty Deed dated June 16, 1976 from Richard L. Roudebush, as Administrator of Veterans Affairs, to Hazel Banks and Jo Ann Bruner, mother and daughter, as joint tenants and not as tenants in common, with full right of survivorship, the whole estate to vest in the survivor in the event of the death of either, which Warranty Deed was filed of record on June 22, 1976, in Book 4220, Page 336, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on June 17, 1976, the Defendant, Hazel Banks, now deceased, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$10,000.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Hazel Banks, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 17, 1976, covering the above-described property. Said mortgage was recorded on June 22, 1976, in Book 4220, Page 355, in the records of Tulsa County, Oklahoma.

The Court further finds that Hazel Mae Banks died on July 1, 1979, and the subject property vested in her surviving joint tenant, Jo Ann Bruner, by operation of law.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of the Defendant, Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks and of judicially terminating the joint tenancy of Hazel Banks and Jo Bruner.

The Court further finds that the Defendant, Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, now deceased, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, now deceased, is indebted to the Plaintiff in the principal sum of \$8,444.38, plus interest at the rate of 9 percent per annum from May 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of

this action in the amount of \$380.15 (\$20.00 docket fees, \$360.15 publication fees).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Jo Ann Bruner, Bernett Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks be and the same hereby is judicially determined to have occurred on July 1, 1979 in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of Hazel Banks and Jo Ann Bruner in the above described real property be and the same hereby is judicially terminated.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$8,444.38, plus interest at the rate of 9 percent per annum from May 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.28 percent per annum until paid, plus the costs of this action in the amount of \$380.15 (\$20.00 docket

fees, \$360.15 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jo Ann Bruner, Bennett Banks, and The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Hazel Banks a/k/a Hazel Mae Banks a/k/a Hazel Willis Banks, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

BY JAMES C. WILSON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. Dennis Semler
J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-617-E
PB/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RAY G. HENDERSON and GINA
HENDERSON, Husband and Wife,

Plaintiffs,

vs.

No. 89-C-561-E

SURVIVAIR, et al.,


Defendants.

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 29th day of November, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED

NOV 29 1990

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

Jack C. Silver, Clerk
U.S. DISTRICT COURT

L.D. ROGERS, an Individual

Plaintiff,

v.

**HAROLD LAY, in his former
official capacity as
Sheriff of Nowata County,**

Defendant.

Case No. 89-C-314-B

JUDGMENT

In keeping with the verdict of the jury returned and filed this date, Judgment is hereby entered in favor of L. D. Rogers, Plaintiff, and against the Defendant, County of Nowata, State of Oklahoma, and the County of Nowata ex rel Sheriff's Department, in the amount of Forty-Six Thousand Dollars (\$46,000.00), plus interest thereon from this date at the rate of 7.28%. Plaintiff is further granted judgment for costs and attorneys fees if timely applied for pursuant to local rule.

DATED this 29th day of November, 1990.


**THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA J. HARRELL,

Plaintiff,

v.

THE CROSBY GROUP, INC.,
a Minnesota corporation
domesticated in Oklahoma,

Defendant.

Civil Action No.
89 C 955 B

FILED
NOV 29 1990

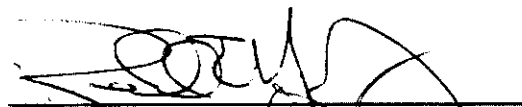
Jack G. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

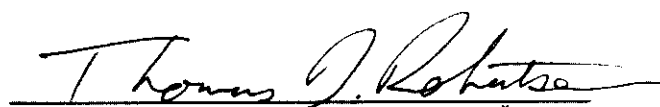
The parties in this proceeding hereby stipulate pursuant to Fed. R. Civ. P. 41(a)(1)(ii), that this action should be and hereby is dismissed, with prejudice. Each party is to bear her or its own costs and attorney fees.

For Plaintiff:

For Defendant:



Ronald E. Hight
5727 South Lewis, Suite 5230
Tulsa, Oklahoma 74105



Thomas D. Robertson, OBA #7665
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-4004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE PARCEL OF REAL PROPERTY,
et al.,

Defendants,

FREDERICK M. FLORENCE,

Claimant/Third Party
Plaintiff,

vs.

ROBERT DAVID FRIEZE and
THE BANK OF INOLA,

Third Party Defendant.

No. 90-C-180-E ✓

F I L E D

NOV 29 1990 *ds*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

This matter is before the Court on Claimant Florence's Motion to Dismiss for Lack of Jurisdiction. The cause of action is one for civil forfeiture of real property located in Breckenridge, Summit County, Colorado. In its complaint, paragraph number 1, the government alleges that the Court has jurisdiction pursuant to §§1345, 1355, 1356 and 1395 of Title 28 of the United States Code along with 18 U.S.C. §981. Section 1345 grants federal district courts original jurisdiction in all civil actions commenced by the United States "[e]xcept as otherwise provided by Act of Congress." §§1355 and 1356 grant federal district courts exclusive jurisdiction in forfeiture and seizure cases, respectively. 28

U.S.C. §1395(b) provides that proper venue for the forfeiture of property is "any district where such property is found." 18 U.S.C. §981 requires, in relevant part, that any civil forfeiture of property involved in a transaction violative of 21 U.S.C. §5313(a) or §5324 must comply with the process set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims "by any district court of the United States having jurisdiction over the property ..." 18 U.S.C. §981(b). Rule C(2) of the Supplemental Rules for Certain Admiralty and Maritime Claims states, in pertinent part:

"In actions in rem the complaint shall be verified on oath or solemn affirmations. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action. (Emphasis added.)

Since the real property defendant in this case is situated in Colorado, it appears to a legal certainty that the government cannot meet the statutory requirements of 18 U.S.C. §981(b).

The only other section of §981 which may arguably pertain to the case at bar is subsection (h) which states:

In addition to the venue provided for in Section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.


In its Response Brief objecting to Claimant's Motion to Dismiss, the government states, inter alia, that the Claimant Florence,

owner of the subject realty, is the object of a federal grand jury investigation. The Brief was filed July 24, 1990. To date this Court has received no notice that Claimant has been indicted. Therefore, the government's reliance on 18 U.S.C. §981(b) is, at best, precipitous.

Based upon the record and the law the Court finds that this matter should be dismissed because the Plaintiff cannot meet the statutory requirements of 18 U.S.C. §981 pursuant to which the action has been commenced.

IT IS THEREFORE ORDERED that this matter is dismissed without prejudice.

ORDERED this 29TH day of November, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY HANNAFORD COMPANY, INC.,
a corporation,

Plaintiff,

v.

CIGNA INSURANCE COMPANY, INC.,
et al.,

Defendant.

No. 89-C-096 C

FILED

NOV 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW before the Court is the Stipulation for Dismissal of the Plaintiff's cause of action filed in open court on the 29 day of November, 1990.

Having considered the Stipulation, it is ordered that this case is hereby dismissed with prejudice pursuant to Rule 41 (a) (1) (ii) of the Federal Rules of Civil Procedure.


H. DALE COOK, CHIEF UNITED STATES
DISTRICT JUDGE

98

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 28 1990

REGENCY OLDSMOBILE, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

GENERAL MOTORS CORPORATION,
a Delaware corporation,

Defendant.

No. 90-C-40-B ✓

O R D E R

The Court has for decision the Motions for Summary Judgment of the Plaintiff and the Defendant pursuant to Fed.R.Civ.P. 56. This is a diversity action in which Plaintiff seeks to recover the sum of \$275,092.00 for warranty, labor and parts furnished over a period from January 1, 1985 to October 31, 1987, as a franchised dealer of Defendant, General Motors Corporation. Plaintiff's claim is based upon the language of 47 O.S. § 565 providing for Plaintiff, as an Oklahoma franchised automobile dealer, to be adequately and fairly compensated for labor, parts and other expenses in complying with Defendant's warranty agreements.

The Defendant responds to Plaintiff's Motion for Summary Judgment by asserting that the Oklahoma legislature did not intend to create a private right of action under 47 O.S. § 565, Plaintiff's claim prior to December 20, 1986 is barred under 12 O.S. § 95(2),¹ and Plaintiff has been fully compensated by

¹Plaintiff commenced this action December 20, 1989.

Defendant under the Dealer Sales and Service Agreement (Defendant's Ex. 5). Defendant also seeks summary judgment for these stated reasons.

The material facts are not in dispute and are as follows: Plaintiff was throughout the applicable period a franchised automobile dealer of the Defendant. On October 31, 1987, Plaintiff sold its franchise and since that date has not been a franchised dealer of General Motors Corporation.

Throughout the applicable period Plaintiff was paid for warranty, labor and parts according to the provisions of the franchise agreement. (Defendant's Ex. 5; Depo. of John Sartain, pp. 64-69 and 103-104).

The dispute centers in the contention of Plaintiff that the warranty reimbursement provisions of the agreement do not permit the Plaintiff to be reimbursed for parts and labor according to prevailing retail rates as provided in 47 O.S. § 565. Thus, the Plaintiff contends the labor and parts reimbursement provisions of the agreement are unenforceable. Plaintiff submits that the labor and parts reimbursement provisions of § 565(9)(b) is the stated public policy of Oklahoma and takes precedence over contrary language. Essentially, Plaintiff urges that under the stated public policy of Oklahoma Defendant could not pay Plaintiff less than retail rates for parts and labor, and could not require Plaintiff to publicly post its labor rates as a condition precedent to be reimbursed the retail labor rate. As stated above, to this contention Defendant asserts 47 O.S. § 565 gives Plaintiff no

private right of action as alleged herein.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Relative to the question of a private right of action, the Court concludes that when the applicable statutes (47 O.S. §§ 561, 565 (9)(b), 572 and 573) are analyzed in light of the criteria of Cort v. Ash, 422 U.S. 66 (1975), a private right of action is permissible.

47 O.S. § 561 in part states the purpose of the subject act is to ". . . avoid undue control of the independent motor vehicle dealer by the motor vehicle manufacturing and distributing

organizations" 47 O.S. § 565 provides that dealers shall be compensated adequately and fairly for parts, labor and expenses performed under manufacturer warranty agreements. Adequate and fair is further defined as that amount charged by the dealer or dealers in their areas of responsibility to their nonwarranty work of like kind.

47 O.S. § 572 states:

"Any action brought to recover any damages that may be sustained by any motor vehicle dealer may be brought in the county in which said dealer is located and in addition to the action for damages he shall be entitled to sue for and have injunctive relief against the threatened loss, damage or injury to his business or property because of any violation of this act or the threatened cancellation, termination or failure to renew any franchise agreement between any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, and said dealer, and the court may grant such injunctive relief, including temporary restraining orders, as it deems just and proper, notwithstanding any other provisions of law, and in addition to any other remedy which may be afforded under any other statute of this state."

47 O.S. § 573 states:

"All provisions in this chapter shall be liberally interpreted to protect the public from fraud in the business of purchasing or selling motor vehicles and to protect the investments of its citizens in motor vehicles and dealerships and to protect the transportation system of the state and shall further be interpreted to affect existing as well as future franchise agreements."

The Cort v. Ash analysis asks the following questions:

1. Is the Plaintiff one of the class for whose especial benefit the statute was enacted?

2. Is there any indication of a legislative intent explicit or implicit either to create a remedy or to deny one?
3. Is it consistent with the underlying intent of the legislative scheme to imply such a remedy for the Plaintiff?
4. Is the cause of action one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law?

Id. at 78.

The central inquiry is whether the legislature intended expressly or impliedly a private right of action.

Defendant lays considerable stress upon the 1985 amendments to § 565 in which (j)(4) regarding compensation for the dealer's damages, including attorneys fees, resulting from cancellation or failure to renew a franchise agreement is deleted. Defendant argues that the Oklahoma cases of Groom v. Kawasaki Motors Corp., U.S.A., 344 F.Supp. 1000 (W.D. Okla. 1972) and Whiteis v. Yamaha Int. Corp., 531 F.2d 968 (10th Cir. 1976), which acknowledged private rights of action for alleged wrongful franchise cancellation are distinguishable because they predate the 1985 amendment.

The Court concludes that the act itself, as aforesaid, evidences the intent of the legislature to authorize a private right of action. Further justification for the private action is the fact that the Oklahoma Motor Vehicle Commission, in response to Plaintiff's claim, advised Plaintiff that the Commission was without authority to consider Plaintiff's claim because Plaintiff was no longer a licensed dealer and that the Commission was without authority to award damages. (Plaintiff's Ex. 2 to Ex. B in Support

2. Is there any indication of a legislative intent explicit or implicit either to create a remedy or to deny one?
3. Is it consistent with the underlying intent of the legislative scheme to imply such a remedy for the Plaintiff?
4. Is the cause of action one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law?

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The Court concludes that the act itself, as aforesaid, evidences the intent of the legislature to authorize a private right of action. Further justification for the private action is the fact that the Oklahoma Motor Vehicle Commission, in response to Plaintiff's claim, advised Plaintiff that the Commission was without authority to consider Plaintiff's claim because Plaintiff was no longer a licensed dealer and that the Commission was without authority to award damages. (Plaintiff's Ex. 2 to Ex. B in Support

of Plaintiff's Motion for Summary Judgment). The subject statute in essence states the public policy of Oklahoma that a dealer is to be reimbursed parts and labor at the prevailing reasonable retail rate. Plaintiff, by way of analysis, relies on the extensive line of interstate carrier cases which states that established tariff rates give rise to public policy that parties cannot alter by agreement. Bernstein Bros. Pipe & Machine Co. v. Denver & R.G.W.R. Co., 193 F.2d 441, 444 (10th Cir. 1951); Louisville & Nashville Railroad Co. v. Central Iron & Coal Co., 265 U.S. 59, 65, 44 Sup. Ct. 441, 68 L.Ed. 900 (1924); Alleghany Corp. v. Romco, Inc., 392 F.Supp. 38, 40 (W.D. Pa. 1975); In Re Penn Central Transportation Co., 477 F.2d 841, 844 (3rd Cir.) *aff'd* 414 U.S. 885, 94 Sup.Ct. 231, 38 L.Ed.2d 137 (1973), and Atchison, Topeka & Santa Fe R.R. Co. v. Bouziden, 307 F.2d 230, 234 (10th Cir. 1962). The Court concludes such cases are analogous as the subject Oklahoma statute provides Oklahoma's stated public policy concerning the manufacturer-dealer reimbursement price or rate for manufacturer warranty work.²

Concerning the issue of the statute of limitations, the parties concede that the applicable limitation period is three years as provided in 12 O.S. § 95(2). The Court thinks it clear that each occasion a dealer provides parts and labor under a vehicle warranty agreement would give rise to a separate claim

²The record reveals that Plaintiff was unaware of the requirements of § 565(9)(b) until the franchise was terminated, so a knowing waiver by receiving the contract reimbursement is not an issue.

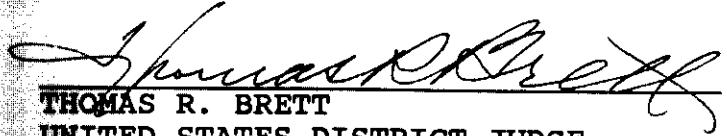
against the manufacturer. Therefore, the period of limitation would have expired for all warranty work performed and completed previous to December 20, 1986. See, Oklahoma Brick Corp. v. McCall, 497 P.2d 215 (Okla. 1972) and Harris v. Heron, 194 Okla. 226, 149 P.2d 94 (1944).

Therefore, the parties' **Motions** for Partial Summary Judgment are sustained as aforesaid, i.e., Plaintiff's private right of action exists for alleged **damages** for warranty work (parts and labor) performed for Defendant, on and after December 20, 1986. Defendant's Motion for Partial Summary Judgment is sustained relative to Plaintiff's **claim** for warranty work performed and completed before December 20, 1986. A factual dispute remains relative to Plaintiff's **alleged damages**.

The parties shall comply with the following trial schedule:

- | | |
|---------|---|
| 1-14-91 | Exchange all witnesses' names and addresses, including experts, in writing. Any witness who appears on the list whose deposition has not been taken, state briefly the subject of that witness' testimony. |
| 1-28-91 | Discovery to be complete.
(See Local Rule 11). |
| 2-4-91 | File agreed pre-trial order and exchange all prenumbered exhibits. |
| 2-11-91 | File requested voir dire, requested instructions and any trial briefs. |
| 2-19-91 | Jury trial at 9:30 A.M. |

DATED this 28th day of Nov., 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 28 1990

DOYLE E. OWEN, JR.,

Plaintiff,

v.

No. 89-C-615-B

MID-CENTURY INSURANCE COMPANY,
and MISSOURI PACIFIC RAILROAD
COMPANY, a Delaware corporation,
d/b/a UNION PACIFIC,

Defendants.

ORDER

Before the Court is the Motion for Summary Judgment filed by the defendant, Missouri Pacific Railroad Company (Union Pacific). Union Pacific maintains that summary judgment is appropriate because the plaintiff, Doyle E. Owen, Jr., has failed to show that the defendant, Union Pacific, breached its duty of care or was the proximate cause of the injury suffered by the plaintiff when his car was struck by an approaching train.

The following facts are uncontested. On or about July 1, 1987 at approximately 8:00 P.M., the plaintiff's car came to rest, straddling railroad tracks. For approximately three hours, the plaintiff remained in his car, consuming intoxicating beverages.¹ Eventually, the plaintiff contacted the Owasso Police Department on his mobile car phone to report his predicament. At approximately 11:30 P.M. that same night, the engineer and brakeman of a Union

¹ Plaintiff's counsel stated at the October 11, 1990 hearing on the motions that the plaintiff became intoxicated during the three hour period he remained in his car on the railroad tracks.

Pacific freight train put the train into emergency braking and sounded the horn when they sighted the plaintiff's car on the tracks. Unable to stop before impact, the freight train collided with the plaintiff's car while the plaintiff stood next to the car talking on the mobile phone to the Owasso Police dispatcher about the impending collision. The plaintiff ignored the dispatcher's advice to move away from the tracks and was subsequently injured when he was knocked about thirty feet from the track by his car door when the train hit the car. The train proceeded approximately four hundred feet down the track after impact before coming to a stop.

Summary judgment pursuant to Fed. R. Civ. P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Winton Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

It is clear from the uncontested facts that the plaintiff has failed to make out a prima facie case of negligence against Union Pacific. Plaintiff argues that Union Pacific breached its duty of

care by failing to operate in accordance with the "assured clear distance ahead" rule, codified at Okla. Stat. tit. 47, §11-801(a). This argument fails, however, because the rule is applicable only to vehicular traffic upon a highway. Moreover, it is undisputed that the train crew placed the train in emergency braking and sounded the horn as soon as the brakeman and engineer identified the object on the tracks as a car. Even if the crew had placed the train into emergency braking when the unidentified object was first sighted on the tracks, the collision with the plaintiff's car could not have been avoided. The Court concludes, therefore, that there is no evidence that Union Pacific breached its duty of care.

Not only has the plaintiff failed to show that Union Pacific has breached its duty to the plaintiff, but the facts further support Union Pacific's argument that the plaintiff's actions in remaining in his car for three hours, drinking until intoxicated, and ignoring the dispatcher's sound advice to move away from an oncoming freight train, critically undermine the plaintiff's claim that Union Pacific's negligence was the proximate cause of the plaintiff's injuries.

The Court concludes that the plaintiff has failed to make out a prima facie case of negligence against the defendant, Union Pacific, and therefore sustains Union Pacific's Motion for Summary Judgment.

In reference to the plaintiff's remaining claim against the defendant, Mid-Century Insurance Company, the Court sets the following trial schedule:

January 7, 1991

FILE AGREED PRE-TRIAL ORDER &
EXCHANGE ALL PRE-NUMBERED EXHIBITS

PURSUANT TO LOCAL RULE 16;

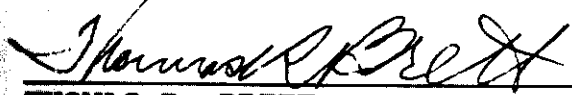
January 14, 1991

FILE SUGGESTED VOIR DIRE, JURY
INSTRUCTIONS, TRIAL BRIEFS, AND
MOTIONS IN LIMINE;

January ²²~~21~~, 1991
actions showed to

JURY TRIAL AT 9:30 A.M.

IT IS SO ORDERED, this 28 day of November, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEPHEN MARK GARRETT,

Plaintiff,

v.

No. 88-C-590-B

ROBERT A. SILLS, an individual,
THERL J. WHITTLE, in his official
capacity as OTTAWA COUNTY SHERIFF
and the BOARD OF COUNTY
COMMISSIONERS
OF OTTAWA COUNTY, OKLAHOMA,
a political subdivision of the
State of Oklahoma

Defendants.

FILED
JUL 28 1988
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA
JUL 28 1988

AMENDED JUDGMENT

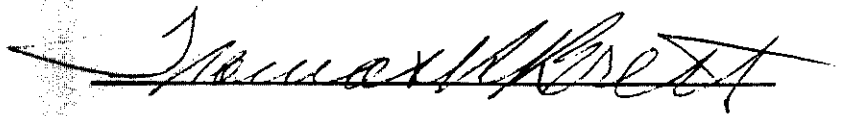
In keeping with the verdict of the jury entered this date, judgment is hereby entered in reference to the Plaintiff Stephen Mark Garrett's 42 U.S.C. §1983 claim against the defendants Robert A. Sills and Ottawa County, Oklahoma, and to the Plaintiff Stephen Mark Garrett's pendent state claims for wrongful termination and intentional interference with contractual relations against Ottawa County, Oklahoma in the total sum of \$102,664.00. (Relative to the judgment on the state pendent claims, Ottawa County's liability is limited to the sum of \$100,000.00, pursuant to 51 O.S. §154 A.2..)

Post-judgment interest at the rate of 7.78% per annum is assessed on the said 42 U.S.C. §1983 judgment, and pre-judgment interest at the rate of 10% per annum from June 24, 1988 until October 26, 1990, and post-judgment interest at the rate of 7.78% per annum is assessed relative to the judgment on the state pendent claims.

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Costs are assessed against the defendants on said 42 U.S.C. §1983 claim and against the Defendant Ottawa County on said state pendent claims, if timely applied for pursuant to Local Rule 6. The Plaintiff is entitled to an award of attorneys' fees relative to the 42 U.S. C. §1983 judgment if timely applied for pursuant to Local Rule 6.

IT IS SO ORDERED, this 16th day of October, 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 28 1990

KENNEDY & MITCHELL, INC.,
a Texas corporation,

Plaintiff,

v.

INTERNORTH, INC. (NOW ENRON
CORP.), d/b/a NORTHERN
NATURAL GAS COMPANY, a
Delaware corporation,

Defendant.

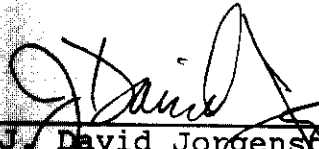
JACK C. BARNETT, CLERK
U.S. DISTRICT COURT

No. 86-C-404C

86-C-609-C

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

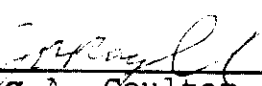
Plaintiff Kennedy & Mitchell, Inc. ("KMI") and
Defendant Internorth, Inc. (now Enron Corp.) d/b/a Northern
Natural Gas Company ("Northern"), pursuant to Fed.R.Civ.P.
41(a)(1), stipulate to the dismissal of, and do hereby dismiss
with prejudice, the above-captioned action with respect to any
and all claims asserted by KMI against Northern, and with respect
to any and all counterclaims asserted by Northern against KMI,
each party to bear its own costs and attorneys' fees.


J. David Jorgenson
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff
KENNEDY & MITCHELL, INC.

OF COUNSEL:

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John A. Rayll
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Tulsa, Oklahoma 74119

Robin L. Harrison
MILLER, BRISTOW & BROWN
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909 Fannin Street
Houston, Texas 77010

Jane G. Alseth
Northern Natural Gas Company
Enron Corp.
P.O. Box 1188
Houston, Texas 77251-1188

Attorneys for Defendant
INTERNORTH INC. (NOW ENRON CORP.)
d/b/a NORTHERN NATURAL GAS COMPANY

NOV 28 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ALEX. BROWN & SONS INCORPORATED,)
)
Plaintiff,)
)
vs.)
)
THRIFTY RENT-A-CAR SYSTEM, INC.;)
WILLIAM E. LOBECK, JR.; JAMES)
R. PHILION; ARCHER McWHORTER;)
JAMES D. PRATT; and ALVIN E.)
SWANNER,)
)
Defendants.)

No. 90-C-164-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Alex. Brown & Sons Incorporated and Defendants Thrifty Rent-A-Car System, Inc., William E. Lobeck, Jr., James R. Philion, Archer McWhorter, James D. Pratt and Alvin E. Swanner (collectively the "Defendants"), hereby stipulate and agree that this action should be dismissed with prejudice. It is further stipulated by Plaintiff and Defendants that all parties will be responsible for their respective costs and attorneys' fees.

David H. Bamberger by wwo
David H. Bamberger, Esq.
PIPER & MARBURY
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Kathryn L. Taylor

Kathryn L. Taylor, OBA #003079
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(918) 665-3930

Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NAOMI OWENS n/k/a NAOMI COLLINS;
INELL BRUNER; JAY C. GARRETT;
THE BROTHERHOOD BANK & TRUST
COMPANY; UNION MORTGAGE COMPANY,
INC.; RONCO CONSTRUCTION
COMPANY; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD
OF COUNTY COMMISSIONERS, Tulsa
County, Oklahoma; and SHEILA GAE
NEWLIN,

Defendants.

FILED

NOV 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1034-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29th day
of Nov, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, Ronco
Construction Company a/k/a Ronald G. Robinson d/b/a Ronco
Construction & Supply Company, appears not, having previously
filed his Disclaimer; and the Defendants, Naomi Owens n/k/a Naomi
Collins, Inell Bruner, Jay C. Garrett, The Brotherhood Bank &
Trust Company, Union Mortgage Company, Inc., and Sheila Gae
Newlin, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Naomi Owens n/k/a Naomi Collins, was served with Summons and Complaint on February 13, 1990; that the Defendant, Inell Bruner, was served with Summons and Complaint on March 29, 1990; that the Defendant, The Brotherhood Bank & Trust Company, was served with Summons and Complaint on February 27, 1990; that the Defendant, Union Mortgage Company, Inc., acknowledged receipt of Summons and Complaint on December 19, 1989; that the Defendant, Ronco Construction Company a/k/a Ronald G. Robinson d/b/a Ronco Construction & Supply Company, acknowledged receipt of Summons and Complaint on December 19, 1989; that the Defendant, Sheila Gae Newlin, acknowledged receipt of Summons and Amended Complaint on July 9, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 14, 1989.

The Court further finds that the Defendant, Jay C. Garrett, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 24, 1990, and continuing through September 28, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does

not know and with due diligence cannot ascertain the whereabouts of the Defendant, Jay C. Garrett, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Jay C. Garrett. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

The Court further finds that the Defendant, Ronco Construction Company, is also known as Ronald G. Robinson d/b/a Ronco Construction & Supply Company.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on January 2, 1990; that the Defendant, Ronco Construction Company a/k/a Ronald G. Robinson d/b/a Ronco Construction & Supply Company, filed its Disclaimer on November 1, 1990; and that the Defendants, Inell Bruner, Jay C. Garrett, The Brotherhood Bank & Trust Company, Union Mortgage Company, Inc., and Sheila Gae Newlin, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Five (5), VALLEY VIEW ACRES ADDITION, to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that this is a suit brought for the further purpose of judicially determining the death of James Allen Bruner and of judicially terminating the joint tenancy of James A. Bruner a/k/a James Allen Bruner and Inell Bruner.

The Court further finds that on June 16, 1976, Naomi Owens executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the

amount of \$9,650.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, Naomi Owens executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated June 16, 1976, covering the above-described property. Said mortgage was recorded on June 21, 1976, in Book 4219, Page 2205, in the records of Tulsa County, Oklahoma.

The Court further finds that James A. Bruner a/k/a James Allen Bruner (hereinafter referred to by either name) and Inell Bruner became the record owners of the real property involved in this action, by virtue of that certain General Warranty Deed dated January 8, 1977, from Naomi Owens, a single person, to James A. Bruner and Inell Bruner, husband and wife, as joint tenants and not as tenants in common, on the death of one the survivor, the heirs and assigns of the survivor, to take the entire fee simple title, which General Warranty Deed was filed of record on January 26, 1977, in Book 4248, Page 651, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that James Allen Bruner died on December 11, 1987, as is evidenced by Certificate of Death No. 28154 of the State Department of Health, State of Oklahoma. Upon the death of James Allen Bruner the subject property vested in his surviving joint tenant, Inell Bruner, by operation of law.

The Court further finds that the Defendant, Naomi Owens n/k/a Naomi Collins, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Naomi Owens n/k/a Naomi Collins, is indebted to the Plaintiff in the principal sum of \$8,501.37, plus interest at the rate of 9 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$274.74 (\$20.00 docket fees, \$12.04 fees for service of Summons and Complaint, \$242.70 publication fees).

The Court further finds that Plaintiff is entitled to a judicial determination of the death of James Allen Bruner and to a judicial termination of the joint tenancy of James A. Bruner a/k/a James Allen Bruner and Inell Bruner in the real property involved.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$203.00, plus penalties and interest, for the year 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Ronco Construction Company a/k/a Ronald G. Robinson d/b/a Ronco

Construction & Supply Company, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, Inell Bruner, Jay C. Garrett, The Brotherhood Bank & Trust Company, Union Mortgage Company, Inc., and Sheila Gae Newlin, are in default and therefore have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of James Allen Bruner be and the same is judicially determined to have occurred on December 11, 1987, in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the joint tenancy of James A. Bruner a/k/a James Allen Bruner and Inell Bruner in the above-described real property be and the same is judicially terminated as of the date of the death of James Allen Bruner on December 11, 1987.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Naomi Owens n/k/a Naomi Collins, in the principal sum of \$8,501.37, plus interest at the rate of 9 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.28 percent per annum until paid, plus the costs of this action in the amount of \$274.74 (\$20.00 docket fees, \$12.04 fees for service of Summons and Complaint, \$242.70 publication fee), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff

for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$203.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Inell Bruner, Jay C. Garrett, The Brotherhood Bank & Trust Company, Union Mortgage Company, Inc., Ronco Construction Company a/k/a Ronald G. Robinson d/b/a Ronco Construction & Supply Company, Sheila Gae Newlin, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Naomi Owens n/k/a Naomi Collins, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$203.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

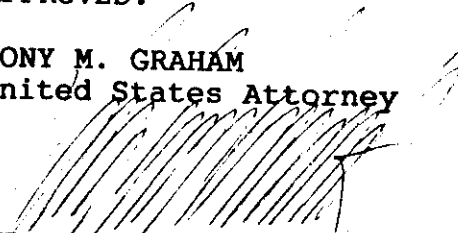
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-1034-B

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WESLEY K. HARMON a/k/a WESLEY
KENT HARMON; KIM L. HARMON a/k/a
KIM HARMON a/k/a KIM LEE HARMON;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

Jack C. [unclear] Clerk
U.S. District Court

CIVIL ACTION NO. 90-C-399-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28th day
of November 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Wesley K.
Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim
Harmon a/k/a Kim Lee Harmon, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that Defendant, County Treasurer, Tulsa County,
Oklahoma, acknowledged receipt of Summons and Complaint on
May 14, 1990; and that Defendant, Board of County Commissioners,
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on May 14, 1990.

The Court further finds that the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record of Tulsa, Oklahoma, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 10, 1990, and continuing to October 15, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its

attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on May 29, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on May 29, 1990; and that the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT FIVE (5), BLOCK THREE (3), SOUTHPARK
ADDITION, to the City of Skiatook, in Tulsa
County, State of Oklahoma, according to the
recorded plat thereof.

The Court further finds that on May 5, 1981, the Defendants, Wesley K. Harmon and Kim L. Harmon, executed and

delivered to the United States of America, acting thru the Farmers Home Administration, their promissory note in the amount of \$35,000.00, payable in monthly installments, with interest thereon at the rate of 13 percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Wesley K. Harmon and Kim L. Harmon, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated May 5, 1981, covering the above-described property. Said mortgage was recorded on May 8, 1981, in Book 4543, Page 1960, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 5, 1981, Wesley K. Harmon and Kim L. Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 5, 1983, Wesley K. Harmon and Kim L. Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on March 30, 1984, Wesley Kent Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an

Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on March 13, 1985, Wesley K. Harmon and Kim Lee Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on March 10, 1986, Wesley K. Harmon and Kim Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 13, 1986, Wesley K. Harmon and Kim Lee Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on May 13, 1986, Wesley K. Harmon and Kim L. Harmon executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 9, 1986, the Interest Credit Agreement was canceled since the borrower ceased to occupy the dwelling.

The Court further finds that the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, made default under the terms of the aforesaid note, mortgage, reamortization and/or deferral agreement, and interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, are indebted to the Plaintiff in the principal sum of \$35,580.10 plus accrued interest in the amount of \$12,615.14 as of September 5, 1989, plus interest accruing thereafter at the rate of 13 percent per annum or \$12.6723 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$15,801.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$287.45 (\$20.00 docket fees, \$267.45 publication fees).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the

Defendants, Wesley K. Harmon a/k/a Wesley Kent Harmon and Kim L. Harmon a/k/a Kim Harmon a/k/a Kim Lee Harmon, in the principal sum of \$35,580.10 plus accrued interest in the amount of \$12,615.14 as of September 5, 1989, plus interest accruing thereafter at the rate of 13 percent per annum or \$12.6723 per day until judgment, plus interest thereafter at the current legal rate of 7.28 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of \$15,801.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$287.45 (\$20.00 docket fees, \$267.45 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

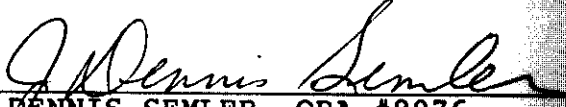
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-399-B
PB/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM FIRE AND CASUALTY CO.,)
A Foreign Corporation,)
PLAINTIFF,)

-vs-

CITY OF TULSA,)
a municipal corporation,)
DEFENDANT.)

CASE NO. 90-C-787-C

FILED

NOV 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW, on this 28th day of November, 1990, for good cause shown, the Court finds the Complaint of Plaintiff, State Farm Fire and Casualty Co., should be allowed to be dismissed without prejudice.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
ex rel. THE PRECISION COMPANY,

Plaintiff,

vs.

KOCH INDUSTRIES, INC., et al.,

Defendants.

No. 89-C-437-C

ORDER

Before the Court is defendants' objection to the Report and Recommendation of the United States Magistrate. The Magistrate recommended that the motion of the defendants to dismiss be denied. This is a qui tam action brought under the False Claims Act, 31 U.S.C. §3729, et seq. (the Act). By statute a qui tam action allows an informer to become a "private attorney general" with a portion of the recovery going to the informer and the remainder to the state. U.S. ex rel LeBlanc v. Raytheon Co., 913 F.2d 17, 19 n.2 (1st Cir. 1990).

The focus of the present motion is §3730(e)(4) of the Act, which provides as follows:

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office Report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

The Magistrate found, and the parties do not dispute, that the first count of the Complaint is (at least in part) based upon publicly disclosed allegations or transactions. In defendants' words: "Thus, the question is squarely presented -- may a plaintiff maintain a qui tam action without qualifying as the original source if its complaint is based only partly upon public disclosures?" (Defendants' objection at 21).

As the Magistrate noted (Report and Recommendation at 3-4), two interpretations of the "based upon" language are possible. One is to compare the public disclosure to the Complaint's allegations. If the threshold determination is made that the action is "based upon" public disclosures, then the suit is barred unless plaintiff qualifies as an original source. The second interpretation requires the Court to compare the public disclosure to plaintiff's own cache of information. If plaintiff's specific facts and witnesses are different from the specific facts and witnesses publicly disclosed, plaintiff need not be an original source. Defendants argue for the first view, while the plaintiff argues for the second view.

The Magistrate likewise endorsed the second view, and undertook a detailed analysis of plaintiff's pre-Complaint investigation. His legal conclusion was that "only suits based entirely, or solely, upon public disclosures are jurisdictionally barred" (Report and Recommendation at 7), and that "Plaintiff may rely in part on public disclosures and still supply facts from its own investigation to support its case; thus obviating the need to satisfy the 'original source' requirement." (Id. at 8).

Authority exists which appears to favor the Magistrate's conclusion. In dicta, the Seventh Circuit has stated that "the Act in its present form does not allow a qui tam plaintiff to bring an action based solely on publicly disclosed transactions." Houck on Behalf of U.S. v. Folding Carton Admin., 881 F.2d 494, 504 (7th Cir. 1989). In U.S. ex rel. LaValley v. First Nat. Bank of Boston, 707 F.Supp. 1351 (D.Mass. 1988), the court employed the method of going behind the Complaint's allegations to examine plaintiff's underlying factual inquiry. Id. at 1366-67. Plaintiff herein has also cited passages from the legislative history of the Act, wherein a sponsor of the 1986 amendments stated that the amendments sought to assure that a qui tam action based solely on public disclosure could not be brought by an individual with no direct or independent knowledge of the information. (Plaintiff's Response at 11-12).

The Court must also keep in mind various principles of construction laid down by the Supreme Court. "[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Consumer Product Safety Com'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). Further, "[g]iven the plain words of the statute," Congress' intent is "best determined by the statutory language that it chooses." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 495 n.13 (1985).

Engrafting the word "solely" onto the statute does not represent a minor judicial gloss. It dramatically expands federal

jurisdiction in this area. Clearly, Congress knew how to draft such language if it wished to do so. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 522-23 (1984). Statutes conferring jurisdiction on federal courts are to be strictly construed, and doubts resolved against federal jurisdiction. F & S Construction Co. v. Jensen, 337 F.2d 160, 161 (10th Cir. 1964). This Court also takes note of the recent warnings regarding judicial reliance upon unenacted legislative history as opposed to statutory language. See, e.g., U.S. v. Taylor, 487 U.S. 326, 344-46 (1988) (Scalia, J., concurring); I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 452-53 (1987) (Scalia, J., concurring); Wallace v. Christensen, 802 F.2d 1539, 1560 (9th Cir. 1986) (Kozinsky, J., dissenting). Finally, the Court disagrees with the Magistrate's reliance upon §3730(d)(1), which discusses an action "based primarily on" prior public disclosures. By its terms, that section is limited to actions in which the government elects to proceed. §3730(d)(2) addresses situations where the government chooses not to proceed. As a matter of textual interpretation, the Court concludes that a qui tam action based in any degree upon public disclosures requires a court to proceed to "original source" analysis. See U.S. ex rel Dick v. Long Island Lighting Co., 912 F.2d 13, 18 (2nd Cir. 1990) ("[W]e believe that if the information on which a qui tam suit is based is in the public domain, and the qui tam plaintiff was not a source of that information, then the suit is barred.")¹

¹The method employed by the court in LeValley, *supra*, actually collapses the two separate inquiries of §3730(e)(4)(A) and (B). This is evidenced by the court's use of "independently", 707 F.Supp. at 1367, a term proper to "original source" analysis under (B). In this Court's view, the "unless" clause of (A) is not implicated until the issue of whether the action is "based upon" public disclosure is resolved.

As noted, §3730(e)(4)(B) requires an original source to be (1) an individual, (2) with direct and personal knowledge of the information on which the allegations are based and (3) who has voluntarily provided the information to the government before filing the action. Initially, defendants assert that, as a corporation, plaintiff does not qualify as an "individual" under the statute. The Magistrate pointed to the numerous times that the statute uses the word "person" to describe a qui tam plaintiff, and rejected the conclusion that a corporation is allowed to bring a qui tam action except where the case is based upon a public disclosure. (Report and Recommendation at 8 n.2). The Court agrees. It is notable that Congress altered its terminology as it did. However, interpreting the statute as defendants argue violates the principle that a statute should be interpreted as a whole. See Philbrook v. Glodgett, 421 U.S. 707, 713 (1975); Kokoszka v. Belford, 417 U.S. 642, 650 (1974); Richards v. United States, 369 U.S. 1, 11 (1962).

Second, the plaintiff must have "direct and independent" knowledge of the information. Again, the Court believes this standard is met. The term "direct" does not mean, as defendants appear to argue, that the plaintiff must be able to provide "eyewitness" testimony supporting the allegations. Rather, the requirement is satisfied if the plaintiff gains the information directly through its own interest and efforts and not fortuitously. See U.S. ex rel Stinson, Lyons, Gerlin & Bustamante v. Prudential Ins. Co. of America, 736 F.Supp. 614, 622-23 (D.N.J. 1990). Likewise, the information gained by plaintiff herein through its

own investigation was "independent" of the public disclosure. Id. at 623.


The final requirement to qualify as an "original source" is that the plaintiff must have voluntarily provided the information to the government before filing the action. In his May 17, 1990 deposition, plaintiff's president William Presley testified that the information gathered between October of 1988 and May of 1989 had not been provided to the government. In a subsequent affidavit dated June 6, 1990, Presley stated that in fact the information had been provided. Defendants urge the Court to reject the affidavit as "uncorroborated and conclusory." (Defendants' Objection at 40). In the summary judgment context, the Tenth Circuit has made clear that an affidavit conflicting with the affiant's prior sworn statements may be disregarded if it constitutes an attempt to create a sham fact issue. Franks v. Nimmo, 796 F.2d 1230, 1237 (10th Cir. 1986). The court noted that relevant factors included whether the affiant was cross-examined, whether he had access to the pertinent evidence at the time of his earlier testimony, or whether the affidavit was based on newly discovered evidence, and whether the earlier testimony reflects confusion which the affidavit attempts to explain. Id. This Court has found no case applying the Franks principle regarding a motion of this type. However, it is established that "[t]he court, not a jury, must weigh the merits of what is presented on a Rule 12(b)(1) motion. . . ." 5A C.Wright & A.Miller, Federal Practice and Procedure, §1350 at 234-35 (1990) (footnotes omitted). Thus, a court may resolve disputed facts in determining the motion. See Williamson v.

Tucker, 645 F.2d 404, 413 (5th Cir.), cert. denied, 454 U.S. 897 (1981). If Franks applies regarding a summary judgment motion, it necessarily can be applicable regarding a 12(b)(1) motion. The Court believes that the subsequent Presley affidavit should be disregarded, and the Court finds that all of the information upon which the lawsuit is based was not provided to the government as required by the statute.² The Magistrate made no finding on this point; therefore, there is no question that the "clearly erroneous" standard is not implicated. cf. Case v. Mondragon, 887 F.2d 1388, 1392 n.2 (10th Cir. 1989), cert. denied, 110 S.Ct. 1490 (1990).

A party invoking the jurisdiction of the federal courts has the burden of proving that federal jurisdiction does exist. Wegerer v. First Commodity Corp. of Boston, 744 F.2d 719, 727 (10th Cir. 1984). The Court is not persuaded that plaintiff has met its burden.

It is the Order of the Court that the motion of the defendants to dismiss is hereby GRANTED.

IT IS SO ORDERED this 26th day of November, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

²As defendants note, the affidavit does not indicate that it is based upon personal knowledge and does not state that the information was given to the government before suit was filed. These constitute additional reasons to accord it less weight than an affidavit meeting these standards.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GERALD H. ZIMMER, GLENDA K.
BULLARD and THOMAS P.
NESTOR,

Plaintiffs,

vs.

ROCKWELL INTERNATIONAL
CORPORATION,

Defendant.

No. 89-C-476-C

FILED

NOV 27 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court for consideration of defendant's motions for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant Rockwell International Corporation and against the plaintiffs Gerald H. Zimmer, Glenda K. Bullard and Thomas P. Nestor.

IT IS SO ORDERED this 26th day of November, 1990.


H. DALE COOK

Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

BUSH MANUFACTURING, INC.
d/b/a BUSH COMPRESSION
INDUSTRIES, an Oklahoma
corporation,

Plaintiff,

vs.

J.T. SCHRIMSHER CONSTRUCTION
CO., INC., an Alabama
corporation,

Defendant.

NOV 27 1990

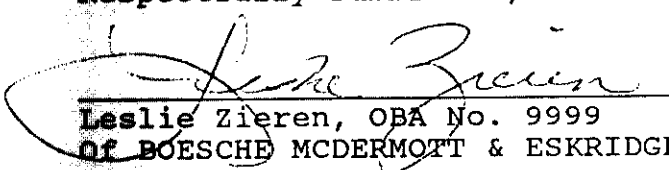
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-239-E

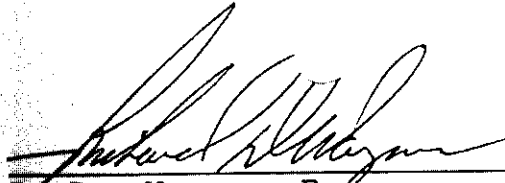
STIPULATION OF DISMISSAL PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 41

The parties hereto, Plaintiff Bush Manufacturing, Inc.,
and the Defendant, J. T. Schrimsher Construction Company, Inc.,
hereby stipulate, pursuant to Federal Rule of Civil Procedure
41(a)(1)(ii), that the above captioned matter should be and hereby
is dismissed with prejudice, by reason of settlement, each party to
bear its own costs, expenses, and attorney fees.

Respectfully submitted,


Leslie Zieren, OBA No. 9999
of BOESCHE MCDERMOTT & ESKRIDGE
800 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777

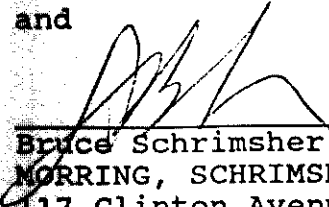
ATTORNEYS FOR PLAINTIFF



R. Dan Wagner, Esq.
WAGNER, STUART & CANNON
902 S. Boulder
Tulsa, OK 74119

ATTORNEY FOR DEFENDANT

and



Bruce Schrimsher, Esq.
MORRING, SCHRIMSHER & RILEY
117 Clinton Avenue, East
P. O. Box 414
Huntsville, AL 35804

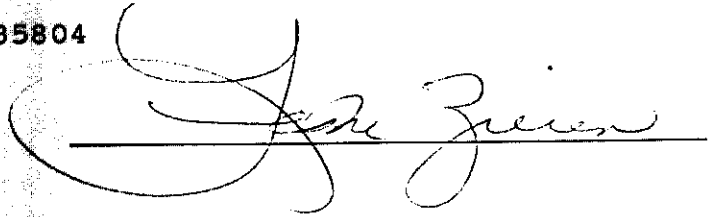
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26 day of Nov. 1990, a true and correct copy of the foregoing Stipulation of Dismissal Pursuant to Federal Rule of Civil Procedure 41 was mailed by first class mail, postage prepaid to the following persons:

Richard D. Wagner, Esq.
Wagner, Stuart & Cannon
902 S. Boulder
Tulsa, OK 74119

Bruce Schrimsher, Esq.
Morrison, Schrimsher & Riley
117 Clinton Avenue, East
P. O. Box 414
Huntsville, AL 35804

A handwritten signature, likely "John Zuercher", is written in cursive over a horizontal line.

FILED
IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA NOV 21 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

GERALD H. ZIMMER, GLENDA K.
BULLARD and THOMAS P.
NESTOR,

Plaintiffs,

vs.

ROCKWELL INTERNATIONAL
CORPORATION,

Defendant.

No. 89-C-476-C

ORDER

Before the Court is plaintiffs' objection to the Report and Recommendation of Magistrate Jeffrey S. Wolfe. The Magistrate recommended granting defendant's motions for summary judgment against the plaintiffs on their remaining causes of action.

Plaintiffs Gerald Zimmer, Glenda Bullard and Thomas Nestor are former employees of defendant Rockwell International Corporation. Plaintiffs were laid off in 1987 during a division-wide reduction in workforce which resulted from the completion of the B-1B Bomber contract. Plaintiffs assert that their layoff was discriminatory because defendant retained employees with less seniority in the same job classification or other job classifications for which they were qualified. Plaintiffs Zimmer, Bullard and Nestor bring a claim for breach of contract, asserting that their employment agreement incorporated a company policy to lay off employees based

on seniority status. Additionally plaintiff Zimmer brings a claim for violation of 29 U.S.C. §623(a), the Age Discrimination in Employment Act.

Each plaintiff signed a document entitled Report for Work Notice and Employment Agreement. It states, in part:

It is agreed that the employment of the undersigned by Rockwell is at the will of either party and may be terminated on notice to the other as prescribed by applicable Rockwell procedure.


The Court has independently reviewed the exhibits and affidavits offered by the parties. Defendant has offered sufficient evidence for this Court to determine, as a matter of law, that plaintiffs were "at-will" employees and were discharged consistent with the policies and procedures established, unilaterally, by the defendant. Plaintiffs have failed to provide credible evidence that seniority was the sole criterion to be used in selecting employees for layoff.

The Court further finds that plaintiff Zimmer has failed to establish a prima facie case of age discrimination. Zimmer was laid off in July 10, 1987. Of the seven layoffs that occurred beginning on January 1, 1987, three were over 40 years of age and four were under 40. In other words, more than half, or 57% of the layoffs had been under the age of 40.

The Court hereby affirms the Report and Recommendation of the Magistrate and adopts it as the Findings and Conclusions of this Court.

Accordingly, it is the Order of the Court that defendant Rockwell International Corporation's motion for summary judgment as against plaintiffs Gerald Zimmer, Glenda Bullard and Thomas Nestor is GRANTED.

IT IS SO ORDERED this 26th day of November, 1990.


H. DALE COOK
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 27 1993

Jack C. Silver, Clerk
U.S. DISTRICT COURT

PETER J. McMAHON, JR.,

Plaintiff,

vs.

DEPUTY WRIGHT, TULSA COUNTY
SHERIFF'S OFFICE,

Defendant.

No. 90-C-319-B

ORDER

This matter comes on for consideration upon the Motion to Dismiss filed by the Plaintiff, Peter J. McMahon, Jr.. The Court concludes this cause should be and the same is hereby DISMISSED, with prejudice.

IT IS SO ORDERED this 27th day of November, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

F I L E D

NOV 27 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**Jack C. Silver, Clerk
U.S. DISTRICT COURT**

INTERSEARCH GAS CORPORATION,)

Plaintiff,)

vs.)

PRYOR PIPELINE, LTD.,)

Defendant.)

Case No. 90-C-483-E

ORDER

NOW on this 27th day of Nov, 1990, the above-referenced matter comes on before this Court on the application of Plaintiff INTERSEARCH GAS CORPORATION, for dismissal with prejudice of its claims against the Defendant in this case. The Court finds that good cause has been shown and the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the claims of INTERSEARCH GAS CORPORATION against the Defendant are dismissed with prejudice to the refiling.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

CPM:dac
11/20/90
Z103-9

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT F. THOMAS a/k/a ROBERT
THOMAS a/k/a ROBERT FARMER;
HELEN THOMAS a/k/a HELEN A.
THOMAS a/k/a HELEN ANN THOMAS
a/k/a HELEN ANN FARMER;
MYRON DALE RATZLAFF a/k/a
MYRON D. RATZLAFF; DEBORA A.
RATZLAFF; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

NOV 27 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-0085-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day
of Nov, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, Robert F. Thomas a/k/a Robert
Thomas a/k/a Robert Farmer, Helen Thomas a/k/a Helen A. Thomas
a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, Myron Dale
Ratzlaff a/k/a Myron D. Ratzlaff and Debora A. Ratzlaff, appear
not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, Myron Dale Ratzlaff a/k/a
Myron D. Ratzlaff and Debora A. Ratzlaff, were served with

Summons and Complaint on May 17, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 7, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 7, 1990.

The Court further finds that the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 23, 1990, and continuing through September 27, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses

of the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 26, 1990; that the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer, Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, Myron Dale Ratzlaff a/k/a Myron D. Ratzlaff and Debora A. Ratzlaff, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage

securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fourteen (14), Block Nine (9), of the Resubdivision of Blocks 9, 10, 11, 12 and 13, Devonshire Place, an Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 11, 1966, Robert F. Thomas and Helen Thomas executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$7,500.00, payable in monthly installments, with interest thereon at the rate of 5.75 percent per annum.

The Court further finds that as security for the payment of the above-described note, Robert F. Thomas and Helen Thomas executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 11, 1966, covering the above-described property. Said mortgage was recorded on February 21, 1966, in Book 3680, Page 47, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that

by reason thereof the Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, are indebted to the Plaintiff in the principal sum of \$3,164.00, plus interest at the rate of 5.75 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$286.24 (\$20.00 docket fees, \$7.84 fees for service of Summons and Complaint, \$258.40 publication fees).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Myron Dale Ratzlaff a/k/a Myron D. Ratzlaff and Debora A. Ratzlaff, are in default and therefore have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Robert F. Thomas a/k/a Robert Thomas a/k/a Robert Farmer and Helen Thomas a/k/a Helen A. Thomas a/k/a Helen Ann Thomas a/k/a Helen Ann Farmer, in the principal sum of \$3,164.00, plus interest at the rate of 5.75 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.28 percent per annum until paid, plus the costs of this action in the amount of \$286.24 (\$20.00 docket fees, \$7.84 fees for service of Summons and Complaint, \$258.40

publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Myron Dale Ratzlaff a/k/a Myron D. Ratzlaff, Debora A. Ratzlaff, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

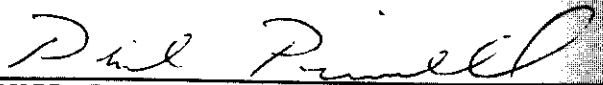
and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

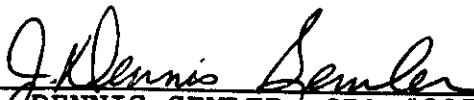
(Signed) H. Dale Lock

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-0085-C

PP/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

FLOYD AUGUST DAVIS, JR.,
Petitioner,
vs.
RON CHAMPION, et al.,
Respondents.

No. 89-C-1067-C

ORDER

Before the Court is the petitioner's objection to the Report and Recommendation of Magistrate Jeffrey S. Wolfe, which recommended denying petitioner's writ of habeas corpus. For the reasons set forth below, the Court rejects the Magistrate's recommendation.

Petitioner is an inmate presently in the custody of the Oklahoma Department of Corrections challenging the conviction of Escape From a Penal Institution entered against him in the District Court of Cleveland County, Oklahoma in Case No. CRF-84-589.

In his second claim for relief, petitioner asserts that the Cleveland County Court committed fundamental error by its instruction No. 4. This instruction advised the jury that they had to make an affirmative finding as to the following question:

4. Did he leave intentionally, knowing what he was doing and that it was wrong? In this regard, you should bear in mind the legal presumption that one intends the obvious and natural consequences of his acts until such time as the contrary is shown.

The jury was then instructed that if the question could be answered yes beyond a reasonable doubt, then it should find the defendant

guilty of the offense of escape. In closing argument, the prosecutor again referred to the presumption:

With reference to the defendant's intent, I think you will find in Instruction Number 5 (sic) something to the effect that, did he leave intentionally knowing what he was doing and that it was wrong. And in this regard you should bear in mind that legal presumption that one intends the obvious and the natural consequences of this act.

Petitioner contends that this instruction is erroneous in that it relieves the State of its obligation to prove beyond a reasonable doubt an essential element of the crime charged, in violation of the Fourteenth Amendment. The Magistrate reported that from a review of the entire trial transcript "instruction No. 4 was not so erroneous that it infected the entire trial. Rather, the error in this case was harmless."

The Magistrate's recommendation is contrary to the express holding of the Supreme Court. In Sandstrom v. Montana, 442 U.S. 510 (1979) the Court held that a similarly worded instruction was clearly unconstitutional because a jury may have interpreted the challenged presumption as conclusive, or as shifting the burden of persuasion and either interpretation would violate the Fourteenth Amendment. 422 U.S. at 524. Subsequently in Connecticut v. Johnson, 460 U.S. 73 (1983) the Court held that in only rare situations would such an instruction be harmless error, that being where the defendant himself has taken the issue of intent away from the jury. 460 U.S. at 87.

Accordingly, the Court finds and concludes that fundamental error was committed by the District Court of Cleveland County, Oklahoma in Case No. CRF-84-589 in violation of the due process clause of the Fourteenth Amendment.

It is therefore the Order of the Court that the writ of habeas corpus is held in abeyance for a period of six months to enable the District Court of Cleveland County, Oklahoma to provide petitioner Floyd August Davis, Jr., a new trial on the offense of Escape From a Penal Institution. Failure to commence trial within six months will result in the granting of petitioner's writ of habeas corpus.

Defendants are directed to file a status report within six months with the Clerk of the Court.

IT IS SO ORDERED this 27th day of November, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its
capacity as Receiver for
First National Bank and
Trust Company of Cushing,
Oklahoma,

Plaintiff,

vs.

JERRY CONREY and JOSEPH E.
MOUNTFORD,

Defendants.

No. 90-C-341-C

ORDER

Before the Court is the motion of plaintiff Federal Deposit Insurance Corporation (FDIC) for summary judgment against the defendants Jerry Conrey and Joseph Mountford.¹

As against defendant Conrey, plaintiff commenced this action for collection on a promissory note and foreclosure of the real property securing the mortgage. The promissory note and mortgage was acquired by the FDIC on March 10, 1988 as part of the assets of the now-defunct First National Bank and Trust Company of Cushing, Oklahoma (Bank).

As a defense, Conrey asserts that he executed and delivered a deed in lieu of foreclosure to the Bank on December 16, 1986. The

¹Defendant Mountford has failed to file a response to plaintiff's motion. Pursuant to Local Rule 15(a) the Court will consider Mountford's lack of response as a confession or acquiescence in the matters raised by plaintiff, and accordingly his claims will not be further addressed in this Order.

deed was part of the records in Conrey's file when the Bank was acquired by the FDIC. Conrey asserts that the name of the grantee was unspecified to permit the Bank "to fill in any name as grantee that it wanted." Conrey contends that it was his understanding with the Bank that the deed would extinguish any debt that he held with the Bank. After the Bank accepted delivery of the deed, the Bank collected rent from the property and used the property as its own. Accordingly, Conrey contends that the indebtedness evidenced by the note and mortgage has been paid, waived or otherwise fully satisfied prior to FDIC taking possession of the Bank.

The Court has carefully reviewed the exhibits offered by the parties. The only proof offered by Conrey of his alleged agreement with the Bank is the Warranty Deed dated December 16, 1986. There is no writing which evidences an accord and satisfaction of his indebtedness nor is there evidence that the promissory note was cancelled. There is no written agreement which would put the FDIC on notice, at the time it acquired the defunct Bank, that Conrey's promissory note was not a valid asset of the Bank.

Assets that the FDIC receives when it assumes control of a failing bank are protected from certain challenges by federal statutory law. 12 U.S.C. §1823(e) provides:

No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.

The only evidence Conrey has of his alleged oral agreement with the Bank is the Warranty Deed. This document does not meet the requisites set forth in §1823(e) and accordingly cannot be used against the FDIC.

In addition to the protection provided by §1823(e), the FDIC is protected under federal common law as announced in D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942). In D'Oench, the Supreme Court held that a defendant would not be allowed to assert as a defense to a claim by the FDIC that a written document which is valid on its face is modified by a secret agreement.

Enforcement of the plain language of §1823(e) and the D'Oench doctrine serves an important public interest. The public is protected by insured deposits offered through the FDIC. In return for this stabilization and security in the banking industry, Congress has required both banks and their borrowers to disclose all material terms of a loan so that the terms are readily reviewable by bank examiners and regulating authorities. Any collateral, secret or oral agreement which would defeat or diminish the collectability of an outstanding loan, will not be recognized or enforced by the courts. See, e.g., FDIC v. Hoover-Morris Enterprises, 642 F.2d 785 (5th Cir. 1981), FDIC v. Grupo Girod Corp., 680 F.Supp. 486 (D.Puerto Rico, 1988) and Resolution Trust Corp. v. Clark, 741 F.Supp. 896 (S.D.Fla. 1990).

From review of the record and applicable law, the Court finds that plaintiff is entitled to summary judgment, as a matter of law.

It is therefore the Order of the Court that the motion of plaintiff Federal Deposit Insurance Corporation for summary

judgment as against defendants Jerry Conrey and Joseph Mountford is hereby GRANTED. Plaintiff shall submit a proposed Final Judgment within ten (10) days of this Order.

IT IS SO ORDERED this 26th day of November, 1990.


H. DALE COOK

Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DARREN L. PARKS,

Plaintiff,

vs.

GENERAL TIRE AND RUBBER
COMPANY and BUDD COMPANY,

Defendants.

No. 90-C-390-C ✓

FILED

NOV 27 1990 *pw*

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has reviewed the various pending motions filed by the parties and the Report and Recommendation entered by Magistrate John L. Wagner.

After weighing the equities and the potential for prejudice as to both parties, the Court concludes that the recommendation of the Magistrate should be affirmed, hereby granting defendants' motions for partial summary judgment on the pleadings as to Counts I, II and V of the complaint, alleging claims for product liability, negligence and punitive damages.

As to plaintiff's remaining claims arising under the Uniform Commercial Code, the Court grants plaintiff's request for dismissal without prejudice.

IT IS SO ORDERED this 26th day of November, 1990.

H. Dale Cook
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LEONARDO M. LEONOFF

Plaintiff,

vs.

No. 90-C-60-C ✓

STANLEY GLANZ, Sheriff of
Tulsa County; VIVIAN WHITE;
DAN CHERRY, Deputy Sheriff;
TOM CREWSON, Special
District Judge; DON
AUSTIN, Court Clerk, and
DAVID MOSS, District
Attorney,

Defendants.

JUDGMENT

This matter came before the Court for consideration of the motion of defendant Dan Cherry for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant Dan Cherry, and against plaintiff Leonardo Leonoff on plaintiff's claim under 42 U.S.C. §1983.

IT IS SO ORDERED this 27th day of November, 1990.

H. Dale Cook
H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LEONARDO M. LEONOFF

Plaintiff,

vs.

No. 90-C-60-C

STANLEY GLANZ, Sheriff of
Tulsa County; VIVIAN WHITE;
DAN CHERRY, Deputy Sheriff;
TOM CREWSON, Special
District Judge; DON AUSTIN,
Court Clerk, and DAVID
MOSS, District Attorney,

Defendants.

ORDER

Before the Court are the objections to the Report and Recommendation of Magistrate, Jeffrey S. Wolfe. The Magistrate recommends that the motions to dismiss filed by defendants Tom Crewson, David Moss, Stanley Glanz, and Don Austin be granted and be denied as to Count I against defendant Dan Cherry.

Plaintiff is a citizen of Israel in the United States on a tourist visa. Plaintiff is currently in the custody of the United States Immigration and Naturalization Service in Laredo, Texas. Plaintiff has previously been confined as a pretrial detainee in the Tulsa County Jail. During his confinement in Tulsa County, plaintiff filed this action pursuant to 42 U.S.C. §1983. Plaintiff seeks damages from defendants Special District Judge Tom Crewson,

District Attorney David Moss, Deputy Sheriff Dan Cherry, Tulsa County Sheriff Stanley Glanz and District Court Clerk Don Austin.

The Court has independently reviewed the record, and concludes that the motions to dismiss filed by Tom Crewson, David Moss, Stanley Glanz, and Don Austin should be granted under Rule 12(b)(6) F.R.Cv.P. for the reasons set forth by the Magistrate in his Report.

The factual background leading to the arrest of the Leonoffs is as follows. On February 3, 1989, a Tulsa County Special District Judge issued an arrest warrant against the Leonoffs for the offense of Removal of a Child From Lawful Custody. On February 6, 1989, the Leonoffs were arrested by Florida authorities on the basis of this warrant. The Leonoffs refused to voluntarily surrender, so extradition was arranged through the Governor's office. The Leonoffs were brought before a Tulsa County Special District Judge for bond hearing on May 8, 1989.

Plaintiff, being an alien, asserts that he knew very little regarding the American judicial system and that he was unable to proficiently understand the English language. Mrs. Leonoff is an American citizen. She represented to the court that she had a twelfth grade education, along with some college classes and that English was her native language. The Tulsa Jewish Community Federation provided the Leonoffs with an attorney. However prior to trial the Leonoffs fired him. Defendants have provided the Court with two transcripts of hearings held before Judge Joe Jennings, the judge assigned to the Leonoffs' criminal case. The

transcripts are from two separate hearings conducted by Judge Jennings regarding the Leonoffs' request to proceed pro se in their criminal jury trial. The first hearing was conducted the day prior to trial. Their retained counsel (and a second attorney who was willing to provide pro bono representation) was present and informed the court that the Leonoffs were requesting that he withdraw from the case. In defendants' exhibits, there are 23 transcript pages containing dialogue on this one issue heard by Judge Jennings. The bulk of the discussion is between the judge and Mrs. Leonoff in which he advised her of the perils of pro se litigation and the advantages of being represented by an attorney. Mrs. Leonoff was adamantly opposed to the assistance of an attorney, either in a representative or advisory capacity. She also informed the court she would not accept representation by a public defender. She stated that she had discussed pro se representation with her husband and that he also elected to proceed pro se. The court then addressed Mr. Leonoff personally. Mr. Leonoff stated that his wife was "very intelligent" and that he wanted her to represent him. The next morning, prior to trial, the court again ask each defendant if they still desired to proceed pro se. The court informed Mr. Leonoff that his wife could not represent him and that he would have to represent himself, but if he wanted to let his wife "carry the ball, so to speak, and do all the talking that's fine and dandy." The jury trial lasted two days, with a verdict of guilty as to both defendants.

In Count I, plaintiff asserts that while confined in the Tulsa County Jail defendant Dan Cherry denied him the right to visit with his wife who was also confined in the facility and was a codefendant in their pending criminal case. Plaintiff asserts that during his confinement he was allowed only five minutes to discuss his case privately with his wife over the telephone and on any other occasion a deputy sheriff was present. Plaintiff asserts that such a denial is in violation of the constitution. The Court finds this argument without merit.

Plaintiff, Leonardo Leonoff, was acting as his own counsel and therefore there was no necessity for consultation with his incarcerated wife. The judge amply explained to both the Leonoffs the perils of proceeding pro se, their right to have an attorney, and the willingness of two competent attorneys to assist them during trial. Both refused his advise. Leonoff's wife was not co-counsel, and it was explained to Leonoff immediately prior to trial that he was required to represent himself. There is no constitutional duty on the State to permit communication between incarcerated codefendants.

The Tulsa County Jail has a policy of restricting correspondence between inmates. Inmates are not permitted to send notes, kites, or other means of messenger to communicate with each other. This policy is for the security and safety of inmates. The fact that the Leonoffs were married does not justify an exception to the policy. In Block v. Rutherford, 468 U.S. 576 (1984) the court held that the refusal to allow visits between pretrial

detainees and their non-incarcerated spouses did not violate the constitution if the policy is reasonably related to legitimate security concerns. However, defendants' policy did allow inmates to communicate with each other through mail.

Plaintiff also asserts that the deputy sheriff prohibited him from discussing with his wife whether they wanted an attorney for appeal purposes. This claim is also without merit. Each defendant in a criminal trial has an independent right to have the assistance of counsel to file an appeal or be permitted to file in forma pauperis if the defendant is unable to hire counsel. Since Mr. Leonoff's right is independent from that of his wife's there was no compelling reason to permit him to discuss the matter with her.

Accordingly the Court finds no constitutional deprivation from the claims raised by plaintiff against defendant Dan Cherry, rendering summary dismissal appropriate.

The Court further orders, sua sponte, that defendant Vivian White (plaintiff's mother-in-law) is dismissed, pursuant to Rule 12(b)(6) F.R.Cv.P., from this action since the complaint fails to allege that she acted under color of law as required by 42 U.S.C. §1983.

IT IS THEREFORE THE ORDER OF THE COURT, that the motions to dismiss filed by defendants Tom Crewson, Stanley Glanz, Don Austin and David Moss are hereby granted.

IT IS THE FURTHER ORDER OF THE COURT, that the motion for summary judgment filed by defendant Dan Cherry is hereby granted.

IT IS THE FURTHER ORDER OF THE COURT, sua sponte, that defendant Vivian White is hereby dismissed with prejudice.

IT IS SO ORDERED this 27th day of November, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LEONARDO LEONOFF, ARIELLA
LEONOFF, MALKA HEFETZ,
SHOSHANA OLEDSKI, LEAH
LEONOFF and HEATHER
ZIMMERMAN,

Plaintiffs,

vs.

No. 90-C-556-C

STATE OF OKLAHOMA; EDWARD
HICKS, Special District
Judge of the District Court
for Tulsa County, Oklahoma;
WILLIAM LaFORTUNE,
Assistant District
Attorney, Tulsa County;
BILL HINDMAN, Social
Service Supervisor with the
Department of Human
Services; et al.,

Defendants.

ORDER

Before the Court is the Report and Recommendation of Magistrate Jeffrey S. Wolfe. The Magistrate recommends summary dismissal of this action under the authority of 28 U.S.C. §1915(d).


Plaintiff Leonardo Leonoff filed this action challenging the constitutionality of a custody and juvenile proceeding before Judge Edward Hicks, District Court Tulsa County, Oklahoma.

The Court has independently reviewed the record and finds that the Magistrate has correctly determined that plaintiff's claim brought pursuant to 42 U.S.C. §1983 is subject to dismissal as a matter of law. Accordingly, the Court affirms the Report and

Recommendation of the Magistrate and adopts it as the Findings and Conclusions of this Court.

It is therefore the Order of the Court that plaintiff's complaint is hereby dismissed with prejudice.

IT IS SO ORDERED this 26th day of November, 1990.



H. DALE COOK
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 27 1990

RICHARD H. HUGHES,

Plaintiff,

vs.

KELLY LANGBERG,

Defendant.

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 90-C-54-C

ORDER

Before the Court is the motion of the defendant to dismiss or, in the alternative, to enforce settlement agreement.

Defendant asserts that plaintiff has failed to comply with the terms of a tentative settlement agreement. Further, that the plaintiff has failed to prosecute the action, as evidenced by plaintiff's failure to observe the Scheduling Order. Plaintiff has not responded to the motion, which was filed September 26, 1990. Pursuant to Rule 15 of the Local Rules, the motion is deemed confessed.

It is the Order of the Court that the motion of the defendant to dismiss is hereby GRANTED.

IT IS SO ORDERED this 27th day of November, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 27 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

BOOKER T. SHEPHARD,

Petitioner,

vs.

No. 90-C-42-C

RON CHAMPION, et al.,

Respondents.


ORDER

Before the Court is the objection of the petitioner to the Report and Recommendation of the United States Magistrate, which recommended denial of the petition.

The Court has independently reviewed the Magistrate's thorough, detailed Report. The Court concludes that it is factually supported and is not contrary to law. The findings and conclusions contained therein are hereby adopted as the findings and conclusions of the Court.

It is the Order of the Court that the Report and Recommendation of the United States Magistrate is hereby AFFIRMED. The petition for writ of habeas corpus is hereby DENIED.

IT IS SO ORDERED this 27th day of November, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DAN KENT WILLIAMS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

F I L E D

NOV 27 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CASE NO. 90-C-0018-C

ORDER

This matter comes on before the Court upon the Stipulation of all parties and the Court being fully advised in the premises **ORDERS, ADJUDGES AND DECREES** that all claims asserted herein by Plaintiff, Dan Kent Williams, against the United States of America, United States Postal Service, and Charley Williams Richey, are hereby dismissed with prejudice, the parties to bear their own costs and attorney's fees.

DATED THIS 26 day of Nov, 1990.

(Signed) N. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

Eddie L. Carr

EDDIE L. CARR, OBA #12601
Attorney for Plaintiff
1100 Petroleum Club Bldg.
601 South Boulder
Tulsa, Oklahoma 74119
(918) 599-9000

Phil Pinnell

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FERNAND PAYETTE, an Individual,)
)
Plaintiff,)
)
v.)
)
THE TULSA CLUB, an Oklahoma)
corporation,)
)
Defendant.)

CASE NO. 89-C-508-C ✓

FILED
NOV 21 1990 *ms*

ORDER OF DISMISSAL PURSUANT
TO F.R.C.P. RULE 41(a)(2)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NOW, on this the 26th day of November, 1990, Plaintiff's application to dismiss with prejudice this action pursuant to F.R.C. Rule F.R.C.P. Rule 41(a)(2) is hereby granted.

The above-referenced action is dismissed by this order of the Court.

W. S. L. Book
UNITED STATES DISTRICT JUDGE

Accordingly, it is the Order of the Court that defendant Rockwell International Corporation's motion for summary judgment as against plaintiffs Gerald Zimmer, Glenda Bullard and Thomas Nestor is GRANTED.

IT IS SO ORDERED this 26th day of November, 1990.


H. DALE COOK

Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 26 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SANDRA L. PARKER,

Plaintiff,

vs.

APACHE CORPORATION, a Delaware
corporation; EQUIFAX SERVICES,
INC., a Georgia corporation;
AMERICAN NATIONAL INSURANCE
COMPANY, a Texas corporation;
JOHN DOE; JANE DOE.

Defendants.

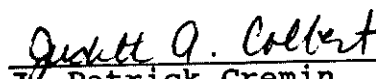
Case No. 90-C-238-E

STIPULATION OF DISMISSAL

Plaintiff, Sandra L. Parker and the Defendants Apache Corporation and Equifax Services, Inc., being all the parties to this action, hereby stipulate pursuant to Rule 41(a)(1) of the Fed. R. Civ. P. that all claims asserted by the Plaintiff, Sandra L. Parker against the Defendants Apache Corporation and Equifax Services, Inc. should be and are hereby dismissed, without prejudice, each party to pay her or its own costs.

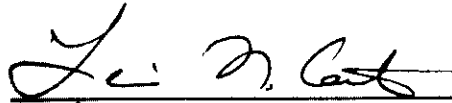

Sandra L. Parker

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By 
J. Patrick Cremin
Judith A. Colbert
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Okla. 74172-0154
ATTORNEYS FOR APACHE CORPORATION

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By



Lewis N. Carter
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
ATTORNEYS FOR EQUIFAX SERVICES,
INC.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 90-C-467-B

\$348,781.05 IN UNITED STATES
CURRENCY;

and

CASHIER'S CHECK NO. 087829 OF
SOONER FEDERAL, TULSA, OKLAHOMA,
IN THE AMOUNT OF \$80,000,
AND PROCEEDS;

and

CASHIER'S CHECK NO. 0880048935 OF
GREAT WESTERN BANK,
ARCADIA, CALIFORNIA,
IN THE AMOUNT OF \$200,000.00,
AND PROCEEDS;

and

CASHIER'S CHECK NO. 0880048926 OF
GREAT WESTERN BANK,
ARCADIA, CALIFORNIA,
IN THE AMOUNT OF \$250,000.00,
AND PROCEEDS;

and

CHECK NO. 033744 OF THE FIRST
NATIONAL BANK & TRUST COMPANY,
BROKEN ARROW, OKLAHOMA,
IN THE AMOUNT OF \$316.67,
AND PROCEEDS;

and

CHECK NO. 033745 OF THE FIRST
NATIONAL BANK & TRUST COMPANY,
BROKEN ARROW, OKLAHOMA,
IN THE AMOUNT OF \$679.17,
AND PROCEEDS;

and

CHECK NO. 033746 OF THE FIRST
NATIONAL BANK & TRUST COMPANY,
BROKEN ARROW, OKLAHOMA,
IN THE AMOUNT OF \$679.17,
AND PROCEEDS;

and

ONE RAYMOND WEIL GENEVE QUARTZ
MAN'S WATCH;

and

ONE GOLD NUGGET BRACELET;

and

ONE GOLD PENDANT NECKLACE

WITH DIAMONDS AND RUBIES;)
 and)
 ONE MAN'S GOLD NUGGET RING)
 WITH DIAMONDS;)
 and)
 ONE MAN'S GOLD HORSESHOE RING)
 WITH DIAMONDS;)
 and)
 ONE WOMAN'S GOLD DIAMOND RING;)
 and)
 ONE 10 OUNCE BAR OF SILVER,)
 NO. 234068;)
 and)
 ONE FIFTY DOLLAR ELIZABETH II)
 1988 CANADIAN GOLD COIN;)
 and)
 TWO 1988 JAPANESE PANDA)
 GOLD COINS;)
 Defendants.)

AGREED JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled, as more fully appears in the written Stipulation For Compromise entered into by and between the Claimant, Robert L. Johnson, filed herein on the 20th day of November, 1990, to which Stipulation for Compromise reference is hereby made and incorporated herein.

It further appearing that no other claims to said properties have been filed since such property was seized and that no other persons have any right, title, or interest in the following-described defendant properties:

- a) THREE HUNDRED FORTY-EIGHT
THOUSAND SEVEN HUNDRED
EIGHTY-ONE AND 05/100 DOLLARS
(\$348,781.05) IN UNITED STATES
CURRENCY;
- b) CASHIER'S CHECK NO. 087829 OF
SOONER FEDERAL, TULSA, OKLAHOMA,
IN THE AMOUNT OF \$80,000.00,
PAYABLE TO ROBERT L. JOHNSON,
AND PROCEEDS;
- c) CASHIER'S CHECK NO. 0880048935 OF
GREAT WESTERN BANK,
ARCADIA, CALIFORNIA,
PAYABLE TO TROPICANA HOTEL,
IN THE AMOUNT OF \$200,000.00,
AND PROCEEDS;
- d) CASHIER'S CHECK NO. 0880048926 OF
GREAT WESTERN BANK,
ARCADIA, CALIFORNIA,
PAYABLE TO NEVADA COIN MART,
IN THE AMOUNT OF \$250,000.00,
AND PROCEEDS;
- e) CHECK NO. 033744 OF THE FIRST
NATIONAL BANK & TRUST COMPANY,
BROKEN ARROW, OKLAHOMA,
PAYABLE TO ROBERT JOHNSON,
IN THE AMOUNT OF \$316.67,
AND PROCEEDS, REPRESENTING
INTEREST FROM CERTIFICATE OF
DEPOSIT NO. 808909 PAYABLE TO
ROBERT JOHNSON IN THE AMOUNT OF
\$50,000.00;

- f) CHECK NO. 033745 OF THE FIRST NATIONAL BANK & TRUST COMPANY, BROKEN ARROW, OKLAHOMA, PAYABLE TO ROBERT JOHNSON, AS INTEREST, IN THE AMOUNT OF \$679.17, AND PROCEEDS, REPRESENTING INTEREST FROM CERTIFICATE OF DEPOSIT NO. 808910 PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$100,000.00;
- g) CHECK NO. 033746 OF THE FIRST NATIONAL BANK & TRUST COMPANY, BROKEN ARROW, OKLAHOMA, PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$679.17, AND PROCEEDS, REPRESENTING INTEREST FROM CERTIFICATE OF DEPOSIT NO. 808911 PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$100,000.00;
- h) ONE RAYMOND WEIL GENEVE QUARTZ MAN'S WATCH;
- i) ONE GOLD NUGGET BRACELET;
- j) ONE GOLD PENDANT NECKLACE WITH DIAMONDS AND RUBIES;
- k) ONE MAN'S GOLD NUGGET RING WITH DIAMONDS;
- l) ONE MAN'S GOLD HORSESHOE RING WITH DIAMONDS;
- m) ONE WOMAN'S GOLD DIAMOND RING.
- n) ONE 10 OUNCE BAR OF SILVER, NO. 234068;

- o) ONE FIFTY DOLLAR ELIZABETH II
1988 CANADIAN GOLD COIN;**
- p) TWO 1988 JAPANESE PANDA
GOLD COINS;**

Now, therefore, on motion of Catherine J. Depew,
Assistant United States Attorney, and with the consent of
Claimant, Robert L. Johnson, it is

ORDERED that the claim of Robert L. Johnson in this
action be, and the same hereby is, dismissed with prejudice
and without costs, and it is

FURTHER ORDERED, ADJUDGED, AND DECREED that the
following-described defendant properties,

- a) THREE HUNDRED FORTY-EIGHT
THOUSAND SEVEN HUNDRED
EIGHTY-ONE AND 05/100 DOLLARS
(\$348,781.05) IN UNITED STATES
CURRENCY;**
- b) CASHIER'S CHECK NO. 087829 OF
SOONER FEDERAL, TULSA, OKLAHOMA,
IN THE AMOUNT OF \$80,000.00,
PAYABLE TO ROBERT L. JOHNSON,
AND PROCEEDS;**
- c) CASHIER'S CHECK NO. 0880048935 OF
GREAT WESTERN BANK,
ARCADIA, CALIFORNIA,
PAYABLE TO TROPICANA HOTEL,
IN THE AMOUNT OF \$200,000.00,
AND PROCEEDS;**

- d) CASHIER'S CHECK NO. 0880048926 OF GREAT WESTERN BANK, ARCADIA, CALIFORNIA, PAYABLE TO NEVADA COIN MART, IN THE AMOUNT OF \$250,000.00, AND PROCEEDS;
- e) CHECK NO. 033744 OF THE FIRST NATIONAL BANK & TRUST COMPANY, BROKEN ARROW, OKLAHOMA, PAYABLE TO ROBERT JOHNSON, IN THE AMOUNT OF \$316.67, AND PROCEEDS, REPRESENTING INTEREST FROM CERTIFICATE OF DEPOSIT NO. 808909 PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$50,000.00;
- f) CHECK NO. 033745 OF THE FIRST NATIONAL BANK & TRUST COMPANY, BROKEN ARROW, OKLAHOMA, PAYABLE TO ROBERT JOHNSON, AS INTEREST, IN THE AMOUNT OF \$679.17, AND PROCEEDS, REPRESENTING INTEREST FROM CERTIFICATE OF DEPOSIT NO. 808910 PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$100,000.00;
- g) CHECK NO. 033746 OF THE FIRST NATIONAL BANK & TRUST COMPANY, BROKEN ARROW, OKLAHOMA, PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$679.17, AND PROCEEDS, REPRESENTING INTEREST FROM CERTIFICATE OF DEPOSIT NO. 808911 PAYABLE TO ROBERT JOHNSON IN THE AMOUNT OF \$100,000.00;
- h) ONE 10 OUNCE BAR OF SILVER, NO. 234068;
- i) ONE FIFTY DOLLAR ELIZABETH II 1988 CANADIAN GOLD COIN;

j) TWO 1988 JAPANESE PANDA
GOLD COINS;

be, and they hereby are, condemned as forfeited to the United States of America and shall remain in the custody of the United States Marshal for disposition according to law, and it is

FURTHER ORDERED that the United States Marshal shall return to the Claimant, Robert L. Johnson, the following-described defendant properties:

- 1) ONE RAYMOND WEIL GENEVE QUARTZ
MAN'S WATCH;
- 2) ONE GOLD NUGGET BRACELET;
- 3) ONE GOLD PENDANT NECKLACE
WITH DIAMONDS AND RUBIES;
- 4) ONE MAN'S GOLD NUGGET RING
WITH DIAMONDS;
- 5) ONE MAN'S GOLD HORSESHOE RING
WITH DIAMONDS;
- 6) ONE WOMAN'S GOLD DIAMOND RING.

1990.

DATED this 21st day of Nov.,

S/ THOMAS R. BRETT

THOMAS R. BRETT
Judge of the United States District
Court for the Northern District of
Oklahoma

CJD/ch
01008

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NOV 21 1990

ELIZABETH DOLE, Secretary of
Labor, United States Department
of Labor,

Plaintiff,

v.

CREDIT BUREAU OF CLAREMORE, INC.
and RODGER H. CODAY, Individually
Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Civil Action

No.

99

CONSENT JUDGMENT

Plaintiff has filed her complaint and defendants have agreed to the entry of judgment without contest. It is, therefore, upon motion of the plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, in any of the following manners:

1. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation

for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

2. Defendants shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by them, and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

It is further ORDERED, that each of the parties shall bear his or her own costs, fees or other expenses incurred at any stage of this action.

Dated this 21 day of NOV, 1990.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Defendants consent to the entry of this judgment:


RODGER H. CODAY

Individually and as President of Credit Bureau of Claremore, Inc., Defendants.

Plaintiff moves for entry of this judgment:

ROBERT P. DAVIS
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

BOBBIE J. GANNAWAY
Counsel for Employment Standards

By:


SARA D. SMITH
Trial Attorney

Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 21 1990

JACQUELINE GORDON,

Petitioner,

v.

STANLEY GLANZ, et al.,

Respondents.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-927-B ✓

ORDER

The matter came on for hearing pursuant to regular setting on this day, November 21, 1990. The petitioner, Jacqueline Gordon, appeared pro se and the defendant, Stanley Glanz, was represented by counsel.

Each party stated that the petition for writ of habeas corpus was moot as the Supreme Court of Oklahoma entered an order on November 19, 1990 staying the petitioner's incarceration and fine, pending resolution of the matter of the petitioner's indirect civil contempt.

As the petitioner is no longer in custody, the petition is denied.

IT IS SO ORDERED, this 21st day of November, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LEONARDO LEONOFF, et al

Plaintiff,

v.

VIVIAN WHITE, et al

Defendant.

90-C-906-B

ORDER DIRECTING CLERK TO RETURN INSUFFICIENT PETITION

Upon review of the proposed **Petition** for a Writ of Habeas Corpus, it appears that petitioners have failed to comply with **Rule 2** of the Rules Governing Section 2254 Cases, in that the Petition is not directed at the conviction(s) in a single court (Rule 2(d)), nor does it specify who has present custody of Petitioners.

Therefore, the Clerk of Court is **hereby** directed to return said Petition to Petitioners together with a copy of this Order pursuant to Rule 2(e) of the Rules Governing Section 2254 Cases.

SO ORDERED THIS 20TH day of November, 1990.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

PATRICIA DILLON, MITCH REIDLE
and KAREN REIDLE,

Plaintiffs,

vs.

TOASTMASTER, INC.,

Defendant/Third Party
Plaintiff,

vs.

PROCTOR-SILEX, INC.,

Third Party Defendant.

Case No.: 89 C 539 B ✓

FILED

NOV 20 1990 8

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER TO SEAL

ON THIS THE fifth day of September, 1990, settlement conference was had in the above captioned matter with all parties, counsel and carriers present. As a result thereof, this suit is concluded and will be dismissed with prejudice to refiling of same. As a portion of the agreement of all parties and carriers involved, and as a mutual consideration for said disposal of this action, it is hereby ordered by this Court that the terms and conditions of settlement shall remain confidential to said persons and companies and shall not be disclosed without an appropriate Order of this Court after due notice to all such interested persons and opportunity given to be heard. The Clerk of this Court is directed to seal all filings pertaining to settlement until further Order of this Court.

That the Orders of this Court as to confidentiality of information disclosed by the Defendants during discovery herein shall remain in full force and effect.


U. S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 20 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

JAMES C. MAYOZA, M.D.,

Plaintiff,

vs.

RONALD L. JACKSON,

Defendant.

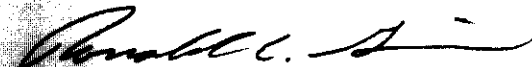
Case No. 86-412-C

STIPULATION OF DISMISSAL

COME NOW the parties to this action, by and through the signatures of the undersigned counsel, and hereby stipulate, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure that the above referenced action shall be dismissed, without prejudice and with each party to bear its own costs and attorneys' fees herein.

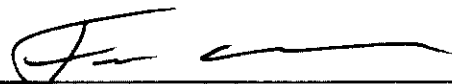
HOLLIMAN, LANGHOLZ, RUNNELS & DORWART,
A Professional Corporation

By



Ronald E. Goins, OBA #3430
Suite 700, Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

Attorneys for Plaintiff.



Frank R. Hickman
16 East 16th Street, Suite 300
Tulsa, Oklahoma 74119

Attorney for Defendant.

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 20 1990

WILLIAM J. FLEISCHAKER, M.D.,)
)
Plaintiff,)
)
vs.)
)
RESOLUTION TRUST CORPORATION,)
as Conservator of STATE FEDERAL)
SAVINGS AND LOAN ASSOCIATION,)
a federal savings and loan)
association,)
)
Defendant.)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-1230-E

JUDGMENT

This action came on for consideration by the Court upon cross motions for summary judgment concerning plaintiff's alleged liability to defendant upon three (3) separate guaranties. The Court has previously entered an order substituting Resolution Trust Corporation as Conservator for State Federal Savings and Loan Association.

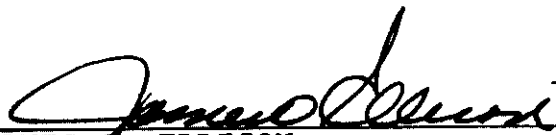
The Court considered the issues and announced its findings and conclusions in its Order of October 11, 1990, which findings and conclusions are incorporated herein.

THE COURT ORDERS, ADJUDGES AND DECREES THAT defendant has materially breached the terms of the guaranty agreements referred to by the parties as the Individual Guaranty and the Substitute Guaranty, thereby completely and finally releasing plaintiff from all obligations thereunder. Concerning the Commitment Guaranty, plaintiff is liable to defendant for 150% of 19.6% of the amounts owing thereunder, which proportionate liability is \$18,329.06.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendant take nothing against plaintiff upon the Individual Guaranty and Substitute Guaranty and have and recover against plaintiff on the Commitment Guaranty the amount of \$18,329.06, plus interest at the presently effective statutory rate accruing from the date of judgment until paid.

The Court reserves decision on the issue of whether plaintiff, defendant or either is entitled to an award of costs and attorneys' fees in this action. The parties may submit an application for fees and a verified bill of costs. Pursuant to Local Rules 4(E) and (G), any such application shall be submitted within fifteen (15) days from entry of this Judgment.

DATED this 19th day of November, 1990.


JAMES S. ELLISON
United States District Judge

APPROVED AS TO FORM AND CONTENT:

John E. Dowdell, OBA #2460
NORMAN & WOHLGEMUTH
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103

Attorney for Plaintiff,
William J. Fleischaker, M.D.

James C. Hodges
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172-0154

Attorney for Defendant,
Resolution Trust Corporation, as
Conservator of State Federal
Savings and Loan Association

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

THE WILLIAMS COMPANIES, INC.,
a Delaware Corporation, and
NORTHWEST ENERGY COMPANY,
a Utah Corporation,

Plaintiffs,

vs.

Case No. 90-C-375-C

TRITON ENERGY CORPORATION,
a Texas Corporation, and
PACIFIC BASIN COMPANY,
a Texas Corporation,

Defendants.

**JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE**

Plaintiffs, The Williams Companies, Inc. and Northwest Energy Company, and Defendants, Triton Energy Corporation and Pacific Basin Company, hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the **Federal** Rules of Civil Procedure, to dismissal of the above entitled action, including any and **all claims** asserted by the Plaintiffs in their Complaint and any and all claims asserted by the **Defendants** in their Counterclaim, with prejudice, with each party to bear its own costs.

DATED this 20 day of November, 1990.

JOHN S. ATHENS
J. DAVID JORGENSEN
G. W. TURNER, III

By John S. Athens
John S. Athens

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for The Williams Companies, Inc.
and Northwest Energy Company

GEORGE W. BRAMBLETT
NOEL M. HENSLEY
KERRY A. McHUGH

By Noel M. Hensley
Noel M. Hensley

HAYNES & BOONE
3100 NCNB Plaza
901 Main Street
Dallas, Texas 75202
(214) 670-0550

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

NOV 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NORTHERN PIPELINE, LTD., a
California limited partnership;
FALLON COUNTY PIPELINE, LTD.,
a California limited
partnership; MONTANA PIPELINE,
LTD., California limited
partnership; SODA CREEK
PIPELINE, LTD., a California
limited partnership; AMERICAN
ENERGY, INC., a California
corporation;

Plaintiffs,

vs.

Case No. 90-C-0075 E

INTERSEARCH CORPORATION, an
Oklahoma corporation;
INTERSEARCH GAS CORPORATION,
an Oklahoma corporation;
HILLTOP PIPELINE SYSTEMS,
an entity;

Defendants.

ORDER

NOW on this 19th day of November, 1990, the
above-referenced matter comes on before this Court on the
application of Plaintiffs, AMERICAN ENERGY, INC. and SODA CREEK
PIPELINE, LTD., for Dismissal with Prejudice of their claim
against the Defendants in this case. The Court finds that good
cause has been shown and the relief prayed for should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
claims of AMERICAN ENERGY, INC. and SODA CREEK PIPELINE,

LTD. against the Defendants are dismissed with prejudice to the refiling. This Order of Dismissal does not affect the pending claims of the remaining Plaintiffs in this matter.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

RDG:dh
11/14/90
Z100-0

FILED

NOV 20 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RANDALL DEAN JOHNSON, and
KERRI LE-ANN JOHNSON,

Plaintiffs.

vs.

Case No.: 90-C-0004-E


BURLINGTON NORTHERN RAILWAY
COMPANY, a Delaware Corporation;
CHICAGO AND NORTHWESTERN
TRANSPORTATION COMPANY, a
Delaware Corporation;
GREENVILLE STEEL CAR COMPANY,
INC., a Pennsylvania Corporation;
AMPCO-PITTSBURG CORPORATION,
a Pennsylvania Corporation;
TRINITY INDUSTRIES, INC., a
Delaware Corporation;
ABC CORPORATION, a foreign
corporation; and
JOHN DOE,

Defendants.

ORDER

COMES NOW for hearing this 19th day of November,
1990, upon the Application for Order and Dismissal With Prejudice.
The Court, after being fully advised in the premises, finds that
the Motion should be and hereby is granted.

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiffs'
Application for Order of Dismissal With Prejudice is granted and
that the above styled and numbered cause against Defendant, Trinity
Industries, Inc., is dismissed with prejudice to refiling. Each
party to bear its costs.


UNITED STATES DISTRICT JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

NOV 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

SHARON GLENN,

Plaintiff,

v.

Case No. 88-C-453-E

OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, et al.,

Defendants.


JUDGMENT

Now on this 19th day of November, 1990, pursuant to a settlement agreement reached by the parties herein, judgment is hereby entered in favor of the Plaintiff Sharon Glenn and against the Defendant Oklahoma Employment Security Commission in the amount of thirty two thousand dollars (\$32,000) which shall be considered damages for pain and suffering.


Further, judgment is entered in favor of the Defendants Robert Funston (a/k/a Bob Funston), and Jack Manley and against the Plaintiff.

The parties hereto shall bear their own attorney fees and costs.

APPROVED:


STEVEN M. ANGEL
50 Penn Place, Ste. 825
5000 N. Pennsylvania
Oklahoma City, OK 73118
ATTORNEY FOR PLAINTIFF


U.S. DISTRICT JUDGE


ROBERT A. NANCE
ASSISTANT ATTORNEY GENERAL
Main Place, Suite 550
420 West Main St.
Oklahoma City, OK 73102
(405) 521-4274
ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LEONARDO LEONOFF, et al

Plaintiff,

v.

VIVIAN WHITE, et al

Defendant.

90-C-906-B

ORDER DIRECTING CLERK TO RETURN INSUFFICIENT PETITION

Upon review of the proposed ~~Petition~~ for a Writ of Habeas Corpus, it appears that petitioners have failed to comply with **Rule 2** of the Rules Governing Section 2254 Cases, in that the Petition is not directed at **the conviction(s)** in a single court (Rule 2(d)), nor does it specify who has present custody of Petitioners.

Therefore, the Clerk of Court is **hereby** directed to return said Petition to Petitioners together with a copy of this Order pursuant to Rule 2(e) of the Rules Governing Section 2254 Cases.

SO ORDERED THIS 20TH day of November, 1990.

Jeffrey S. Wolfe
JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 20 1990

RITA B. BARKAN, PAUL BENGELS,
and JEROME S. HEIMLICH,

Plaintiffs,

vs.

HILTI, INC.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

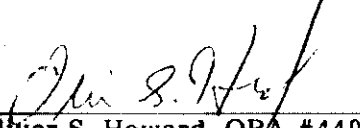
Case No. 89-C-318-E

TIME STUDY CASE

Record Time Spent by Judge or Magistrate

STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF COUNTERCLAIMS

Defendant Hilti, Inc. ("Hilti"), by and through its attorneys of record Gable & Gotwals, Inc., and Plaintiffs Rita B. Barkan ("Barkan"), Paul Bengels ("Bengels"), and Jerome S. Heimlich ("Heimlich"), by and through their attorneys of record Bond, Balman & Hyman, hereby stipulate and agree, pursuant to Fed. R. Civ. Proc. 41(a)(1) and (c), to the dismissal of all counterclaims asserted by Hilti against Bengels and Heimlich, without prejudice to the refiling thereof. The parties further stipulate and agree that each side will bear its own costs and fees with respect to the counterclaims.



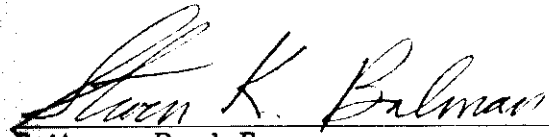
Oliver S. Howard, OBA #4403
J. Daniel Morgan, OBA #10550
Renée DeMoss, OBA #10779
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201

Robert E. Juceam
Andrea Geddes Poole
Debra Shapiro
FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON
One New York Plaza
New York, New York 10004
(212) 820-8040

Mary Constance T. Matthies
MATTHIES LAW FIRM, P.C.

4025 First National Bank Tower
Tulsa, Oklahoma 74103
(918) 582-4400

ATTORNEYS FOR DEFENDANT

A handwritten signature in cursive script, reading "Steven K. Balman", is written over a horizontal line.

Patterson Bond, Esq.
Steven K. Balman, Esq.
Bond, Balman & Hyman
2626 East 21st Street, Suite 9
Tulsa, Oklahoma 74114

ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 19 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania
corporation,

Plaintiff,

vs.

Case No. 90-C 389-B ✓

KATHYE KENNEDY, an individual,

Defendant,

HOWARD KENT KENNEDY, KELO WAYNE
KENNEDY, RHONDA DEE WILKINS and
BRENDA KENNEDY, children of
Arlan Kennedy, deceased,

Intervenors.

ORDER

UPON consideration of the parties' Joint Application
for Disbursement of Funds the Court finds that said funds should
be disbursed as follows:

That the attorney for the Plaintiff, George Gibbs,
receive TWO THOUSAND TWENTY SIX DOLLARS AND 01/100 (\$2,026.01) in
conformity with the Application for Attorney Fees and Costs filed
herein.

That the Intervenor, HOWARD KENT KENNEDY, receive
ONE THOUSAND DOLLARS (\$1,000.00).

That KELO WAYNE KENNEDY receive ONE THOUSAND DOLLARS
(\$1,000.00).

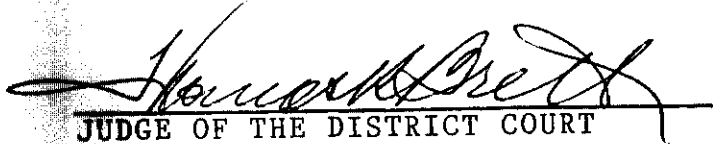
OK-NR 7M
10

c/m

That RHONDA DEE WILKINS receive ONE THOUSAND DOLLARS (\$1,000.00) and that BRENDA KENNEDY receive ONE THOUSAND DOLLARS (\$1,000.00).

That KATHYE KENNEDY receive SIXTY TWO THOUSAND ONE HUNDRED NINETY FIVE DOLLARS AND 09/100 (\$62,195.09).

That the Court further finds that this matter has been completely resolved by the parties and the Court orders the matter dismissed with prejudice as to any future actions.


JUDGE OF THE DISTRICT COURT

RDG:dh
11/13/90
Y130-0

JAD/sw/09/26/90

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

NOV 19 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

THELMA R. SPENCER, and)
ROBERT E. SPENCER,)
individually and as)
husband and wife,)

Plaintiffs,)

vs.)

Case No. 90-C 640 E

KEVIN COLE; AMERICAN)
FAMILY INSURANCE COMPANY,)
a foreign corporation;)
UNITED SOUTHERN ASSURANCE)
COMPANY, a foreign)
corporation; PORT CASTA-)
WAYS; KATHY HIX, as owner)
proprietor and/or license)
holder of Port Castaways;)
and PHILLIPS PETROLEUM)
COMPANY, a Delaware)
corporation, d/b/a)
WASHINGTON EXPRESS CON-)
VENIENCE-DELI, a/k/a)
PHILLIPS 66 FOOD PLAZA,)

Defendants.)

ORDER

NOW on this _____ day of _____, 1990,
this matter comes on before the undersigned Judge of the
District Court on Defendant, American Family Mutual Insurance
Company's, Motion to Dismiss.

The Court, having reviewed said Motion, finds that
the same should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Cross-Claim of Defendant, American Family Mutual Insurance Company, against Defendant, Phillips Petroleum Company, only, be dismissed without prejudice as to refiling.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

NOV 10 1990

**Jack C. Silver, Clerk
U.S. DISTRICT COURT**

ROBERT L. PARKER and CATHERINE
MAE PARKER, TRUSTEES OF THE
ROBERT L. PARKER TRUST,

Plaintiffs,

vs.

Case No. 90-C-158-E

MANUFACTURERS HANOVER TRUST
COMPANY, A NEW YORK BANKING
CORPORATION, and SHEARSON
LEHMAN HUTTON, INC., A DELAWARE
CORPORATION,

Defendants.

ORDER

The Application of Plaintiffs to dismiss the Second Claim for Relief stated in Paragraph 11 of the First Amended Complaint filed herein on March 1, 1990 is granted and the Court hereby Orders that the same be and it is hereby dismissed without prejudice.

DATED this 16 day of November, 1990.

S/ JAMES O. ELLISON

**James O. Ellison
United States District Judge**

IN : UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KENNETH EARL JONES

Plaintiff,

v.

JOHNSTON'S PORT 33, INC.,

Defendant.

No: 89-C-268 B

FILED

NOV 19 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Pursuant to the Stipulation for Dismissal, said cause is hereby dismissed with prejudice, each party to bear its own costs.

Dated this 19 day of Nov., 1990.

S/ THOMAS R. BRETT

U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 18 1990

OKLAHOMA CLOTHING, an Oklahoma
general partnership d/b/a Esprit

Plaintiff,

v.

RREEF USA FUND III, a California
Group Trust,

Defendant and Third-
Party Plaintiff,

v.

K. SAMUEL COHLMIA and W. R.
NORRIS,

Third-Party Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-956-B


ORDER

Upon the Joint Stipulation for Dismissal with Prejudice of
the parties, the Court orders that this matter is dismissed with
prejudice.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

Approved as to Form:


Gerald L. Hilsher (OBA #4218)
Stuart D. Campbell (OBA #11246)

HUFFMAN ARRINGTON KIHLE GABERINO & DUNN
A Professional Corporation
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141

Attorneys for RREEF USA Fund III,
a California Group Trust

By: W. Kyle Tresch
Craig W. Hoster, Esq. (OBA #4384)
W. Kyle Tresch, Esq. (OBA #13789)

BAKER, HOSTER, McSPADDEN
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 741

Attorneys for Plaintiff,
Oklahoma Clothing, an Oklahoma
general partnership, d/b/a Esprit;
and Third-Party Defendants,
K. Samuel Cohlma and W. R. Norris

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES C. VAN METER,

Plaintiff,

v.

CITIES SERVICE COMPANY and
OCCIDENTAL PETROLEUM
CORPORATION,

Defendants.

CIVIL ACTION NO.
87-C-1046-C

FILED

NOV 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CONSENT COURT ORDER, DECREE AND FINAL JUDGMENT

The parties to the above-captioned action, Plaintiff James C. Van Meter ("Plaintiff"), Co-Defendants Cities Service Company now named OXY Oil and Gas USA Inc. ("Cities Service"), of which OXY USA Inc. (formerly known as "Cities Service Oil and Gas Corporation") is a direct subsidiary, and Occidental Petroleum Corporation ("Occidental") (collectively "Defendants"); having mutually agreed to settle this lawsuit and having consented to the entry of this Order, Decree and Final Judgment by and through their duly authorized counsel of record, it is hereby ORDERED, ADJUDGED and DECREED that:

1. The prior dismissal without prejudice of this action is reopened solely for the purposes of entry of this Consent Order, Decree and Final Judgment:

2. The Settlement and Mutual Release Agreement between the parties effective October 1, 1988 ("Settlement Agreement") is hereby approved, and the parties are permanently ordered and directed to comply therewith;

3. Pursuant to the Settlement Agreement, Plaintiff shall receive in release, discharge and for Company Thrift plan Contribution amounts based on wages earned for consulting services during the employment period from May 6, 1983 through October 1, 1988, the sum of \$84,490, including interest.

4. Van Meter (and through him, his wife, Mary Van Meter, and any other dependents he may have) shall be paid post-employment benefits (quarterly payments under the Executive Retirement Benefit Plan and monthly post-employment benefit payments as set forth in the Settlement Agreement) and awarded any other fringe benefits as though he were a retired executive of Cities Service as provided for in the Employment Agreement and as specifically set out in paragraphs 7 and 8 therein. The post-employment benefit shall begin with the one due for October, 1988, following entry of this Order.

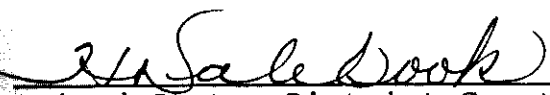
5. Pursuant to the Settlement Agreement Defendant Cities Service shall cause Plaintiff to be made eligible as of

October 1, 1988, to participate as a retiree in the Occidental Petroleum Corporation Comprehensive Medical Plan, the Occidental Petroleum Corporation Basic Life Insurance Plan, the Defendants' matching contributions plans and any other plans for retired executives such as Plaintiff and as he may be or become eligible.

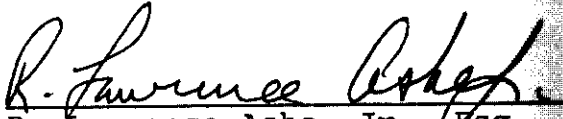
6. Van Meter (and through him, his wife, Mary Van Meter, and any other dependents he may have) shall be paid post-employment benefits and awarded all other fringe benefits as though he were a retired executive of Cities Service as provided for in the Employment Agreement and as specifically set out in Paragraphs 7 and 8 of the Settlement Agreement. The post-employment benefit payments began with the one due for October 1988 and shall continue in accordance with the Settlement Agreement. Van Meter's rights under the Settlement Agreement are hereby confirmed.

7. Subject to performance of the Settlement Agreement referenced, this action is dismissed with prejudice, each party to bear his and its own respective costs.

IT IS HEREBY ORDERED AND ADJUDGED, this 10th day of November, 1990.


United States District Court
Northern District of Oklahoma

CONSENTED TO:



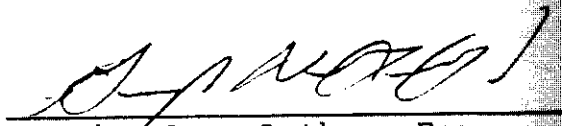
R. Lawrence Ashe, Jr., Esq.
PAUL, HASTINGS, JANOFSKY
& WALKER

4200 Georgia-Pacific Center
133 Peachtree Street, N.E.
Atlanta, Georgia 30303
(404) 588-9900

Attorney for Plaintiff



Ronald A. Skoller, Esq.
OXY Oil and Gas USA Inc.
110 West 7th Street
Tulsa, Oklahoma
(918) 561-4914



Graydon Dean Luthey, Esq.
JONES, GIVENS, GOTCHER,
BOGAN & HILBORNE
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity as holder of assets
of the failed Farmers State
Bank, Afton, Oklahoma,

Plaintiff,

v.

Case No. 90-C0055-C

JOHN E. PAINTER AND EVELYN
S. PAINTER, husband and wife;
ELMER ROBISON AND PAULINE
ROBISON, husband and wife;
MIKE TRUE AND REBECCA TRUE,
husband and wife; DELMAR G.
TRUE AND MYRLE A. TRUE,
husband and wife; OTTAWA
COUNTY TREASURER AND THE
BOARD OF COUNTY COMMISSIONERS
OF OTTAWA COUNTY, OKLAHOMA;
DELAWARE COUNTY TREASURER AND
THE BOARD OF COUNTY
COMMISSIONERS OF DELAWARE
COUNTY, OKLAHOMA; E.O. HOLEMAN
a/k/a ELZA HOLEMAN AND JANE
DOE HOLEMAN, husband and wife;
CHARLES DONALD MIZE, JR. AND
CARRIE J. MIZE, husband and
wife; and the heirs, executors
administrators, devisees,
trustees and assigns, known
and unknown immediate and
remote of CHARLES DONALD MIZE,
SR., a/k/a C.D. MIZE,
Deceased,

Defendants,

and

STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION; and
SECURITY BANK AND TRUST
COMPANY, Miami, Oklahoma,

Additional Party
Defendants.

FILED

NOV 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

THIS MATTER COMES on for hearing of Plaintiff's Motion for Summary Judgment before the undersigned United States District Judge and further upon stipulation and agreement of the undersigned parties; the Plaintiff appearing by and through its attorney Steven S. Mansell; Defendants John Painter and Evelyn Painter, husband and wife, appearing by and through their attorney Roger Scott; Defendants Elmer Robison and Pauline Robison, husband and wife, appearing by and through their attorney Donna L. Smith; Defendant Security Bank and Trust Company, Miami, Oklahoma, appearing by and through its attorney Richard D. James; and the Court being advised in premises finds:

1. Defendants John E. Painter and Evelyn S. Painter, husband and wife, were duly served with Summons and Complaint on February 5, 1990, and have entered their appearance and filed their answer through attorney Roger Scott.

2. Defendants Elmer Robison and Pauline Robison, husband and wife, were duly served with Summons and Complaint on March 3, 1990, and have entered their appearance and filed their answer through attorney Donna L. Smith.

3. Defendants Mike True and Rebecca True, husband and wife; and Delmar G. True and Myrle A. True, husband and wife, were duly served by publication in the Tulsa Tribune on July 27, August 3, and August 10, 1990, and in the Delaware County Journal on May 16, May 23, and May 30, 1990, and have failed to answer or otherwise plead, and are in default.

4. Defendants Ottawa County Treasurer and the Board of County Commissioners of Ottawa County, Oklahoma, were duly served with Summons and Complaint on February 2, 1990, and entered their appearance and filed their answer through attorney Morlane T. Barton, thereby disclaiming any right, title or interest in and to the subject real property.

5. Defendants Delaware County Treasurer and the Board of County Commissioners of Delaware County, Oklahoma, were duly served with Summons and Complaint on February 2, 1990, and entered their appearance and filed their answer through Robert C. Jenkins, thereby disclaiming any right, title or interest in and to the subject real property.

6. Defendants E.O. Holeman a/k/a Elza Holeman and Jane Doe Holeman, husband and wife; Charles Mize and Carrie Mize, husband and wife; and the heirs, executors, administrators, devisees, trustees and assigns, known and unknown immediate and remote of Charles Donald Mize, Sr., a/k/a C.D. Mize, Deceased, were duly served by publication in the Tulsa Tribune on July 27, August 23, and August 10, 1990, and in the Delaware County Journal on May 16, May 23, and May 30, 1990, and have failed to answer or otherwise plead, and are in default. "The Court conducted a judicial inquiry into the sufficiency of plaintiff's search to determine the names and whereabouts of the defendants who were served herein by publication, and based on the evidence adduced the Court finds that plaintiff has exercised due diligence and has conducted a meaningful search of all reasonably available sources at hand. The Court approves the publication

service given herein as meeting both statutory requirements and the minimum standards of state and federal due process."

7. Defendant State of Oklahoma, ex rel. Oklahoma Tax Commission was duly served with Summons and Complaint on May 29, 1990, and entered their appearance and filed their answer through Lisa Hawes, thereby disclaiming any right, title or interest in and to the subject real property.

8. Defendant Security Bank and Trust Company, Miami, Oklahoma, was duly served with Summons and Complaint on May 30, 1990, and entered its appearance and filed its answer through Richard D. James.

9. At all times, material hereto, Defendants John E. Painter and Evelyn S. Painter were husband and wife.

10. FDIC is a corporation organized and existing under the authority of the Federal Deposit Insurance Act, as amended (12 U.S.C. §1881 et seq.).

11. On the 17th day of October, 1985 the Bank Commissioner of the State of Oklahoma declared Farmers State Bank, Afton, Oklahoma ("Bank"), insolvent and pursuant to Title 6 O.S. §1202, took possession of the assets of the failed Bank. Pursuant to Title 6 O.S. §1205 the Bank Commissioner of the State of Oklahoma appointed FDIC as Liquidator of the Bank.

12. Pursuant to 12 U.S.C. §1823, FDIC in its corporate capacity purchased and now holds certain assets of the Bank, including the Promissory Note and Mortgages executed by the Defendants and sued upon herein.

13. The Court has jurisdiction over the parties and subject matter pursuant to 12 U.S.C. §1819 as amended August 9, 1989, and 28 U.S.C. §1345. The properties which are the subject of this action are located in Delaware and Ottawa Counties, both of which are in the Northern District of Oklahoma.

14. On or about the 15th day of August, 1984, the Defendants, John E. Painter and Evelyn S. Painter, made, executed and delivered to the Bank their certain Promissory Note in the principal amount of \$156,842.98 with interest thereon at the rate of 16% per annum, and maturing November 13, 1984.

15. The Defendants, John E. Painter and Evelyn S. Painter, are in default under the terms of the Note for failure to make the payment when due. After applying all just credits, there is currently due and owing FDIC the principal sum of \$156,842.98, together with accrued interest in the amount of \$107,122.75 through the 11th day of September, 1990, and thereafter accruing at the per diem rate of \$68.75, until judgment and thereafter accruing as provided by law.

16. As part and parcel of the foregoing and for the purpose of securing the indebtedness due under the Promissory Note sued upon in FDIC's Count I said Defendants, John E. Painter and Evelyn S. Painter, husband and wife, made, executed and delivered unto the Bank their certain Mortgage of Real Estate dated the 15th day of August, 1984 covering the following described real property located in Delaware County, Oklahoma, to-wit:

Southwest Quarter (SW/4) of the Southeast
Quarter (SE/4) of Section Twenty-eight (§28),

Township Twenty-five North (25N), Range Twenty-two East (22E), containing forty (40) acres, more or less.

This property will hereafter be referred to "Tract I".

17. Mortgage tax was paid on the referenced mortgage as receipted by endorsement on the face of the mortgage which mortgage was recorded October 10, 1984 in Book 473 at Page 649 at the Office of the County Clerk of Delaware County, Oklahoma.

18. The following tracts of real property have been released from said mortgage, to-wit:

The North Half (N/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-Eight (§28), Township Twenty-Five North (25N), Range Twenty-Two (22) East of the Indian Principle Base and Meridian in Delaware County, Oklahoma, containing 5 acres.

and

The South Half (S/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-eight (§28), Township Twenty-five North (25N), Range Twenty-two East (22E) of the Indian Principle Base and Meridian in Delaware County, Oklahoma, and containing Five (5) acres, and subject to an easement for right of ingress and egress over a strip of land Thirty feet (30') in width the centerline of which is described as follows: Beginning at a point on the South line of said S/2, SE/4, SW/4, SE/4 South 89°54' East a distance of 265 feet from the Southwest Corner thereof; thence North 04°21'30" East a distance of 330.44 feet to a point on the North line of said S/2, SE/4, SW/4, SE/4 South 89°53'30" East a distance of 290 feet from the Northwest Corner thereof.

19. The mortgage provides that in the event of a default, the Bank is entitled to foreclose with or without appraisalment. FDIC hereby elects to have said property sold with appraisalment.

20. FDIC is entitled to foreclose its mortgage as against all Defendants for all amounts due FDIC from the Defendants, John E. Painter and Evelyn S. Painter.

21. The Defendants, Delaware County Treasurer and the Board of County Commissioners of Delaware County, claim no interest in the subject real property.

22. The Plaintiff joined E.O. Holeman a/k/a Elza Holeman and "Jane Doe" Holeman, husband and wife, to determine any interest they may have in the subject property. Service by publication was completed on September 10, 1990, and judgment by default may be rendered against said Defendants.

23. The Plaintiff joined Charles Donald Mize Jr., and Carrie Mize, husband and wife, and the heirs, executors administrators, devisees, trustees and assigns, known and unknown, immediate and remote, of Charles Donald Mize Sr., a/k/a C.D. Mize, deceased, to determine any interest they may have in the subject property. Service by publication was completed on September 10, 1990, and judgment by default may be rendered against said Defendants.

24. Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, filed a Disclaimer in the subject action on or about June 19, 1990, thereby disclaiming any interest in the subject real property.

25. As part of the foregoing and for the purpose of further securing the obligation sued upon in FDIC's Count I, the Defendants, John E. Painter and Evelyn S. Painter, husband and wife, made, executed and delivered to the order of the Bank,

their certain Assignment of Real Estate Mortgage dated December 28, 1984, covering property located in Delaware County, Oklahoma, and described as follows, to-wit:

The South Half (S/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-five (25), Township Twenty-five North (25N), Range Twenty-two East (22E) of the Indian Principle Base and Meridian in Delaware County, Oklahoma, and containing Five (5) acres, and subject to a easement for right of ingress and egress over a strip of land Thirty feet (30') in width the centerline of which is described as follows: Beginning at a point on the South line of said S/2, SE/4, SW/4, SE/4 South 89°54' East a distance of 265 feet from the Southwest Corner thereof; thence North 04°21'30" East a distance of 330.44 feet to a point on the North line of said S/2, SE/4, SW/4, SE/4 South 89°53'30" East a distance of 290 feet from the Northwest Corner thereof.

This property is hereafter referred to as "Tract II".

The above described legal description is in error because it references Section 25 instead of the section that the parties intended to convey, Section 28. Therefore, the above legal description should be reformed and modified to reflect that the tract of land is in Section 28 instead of in Section 25.

26. Said Assignment of Mortgage relates to a Mortgage originally given by Elmer Robison and Pauline Robison, which original Mortgage is dated October 10, 1984, and recorded in Book 474 at Page 634 in the Office of the County Clerk, Delaware County, Oklahoma. Mortgage tax was paid on the said original mortgage as receipted by endorsement on the face of the mortgage which mortgage was recorded as stated above and said Assignment of Mortgage was filed of record January 14, 1985, in Book 478 at

Page 148 in the Office of the County Clerk of Delaware County, Oklahoma.

27. Said Assignment of Mortgage on its face provides that same is given to secure the payment of Defendants' debt to the Bank and the Defendants, John E. Painter and Evelyn S. Painter, did thereby convey and assign the said certain mortgage together with the note, debt and claim secured by said mortgage.

28. The mortgage provides that in the event of a default, the Bank is entitled to foreclose with or without appraisalment.

29. Plaintiff is entitled to an accounting from Defendants, John E. Painter and Evelyn S. Painter, for all amounts received from the mortgagors, Elmer Robison and Pauline Robison pursuant to said Assignment of Mortgage and to have a constructive trust placed on such proceeds, which have been paid to the Painters.

30. Defendant, Security Bank and Trust Company of Miami, Oklahoma, claims an interest in Tract II by reason of an Assignment of Mortgage, dated October 1, 1989, and recorded in Book 561 at Page 372 of the records of the Delaware County Clerk. By reason of the scrivener's error mentioned above, Security Bank and Trust Company had no actual or constructive notice of the assignment to Farmer's State Bank on December 28, 1984 referenced above, and therefore the mortgage of Security Bank and Trust Company is prior and superior to the mortgage of FDIC on Tract II. FDIC is entitled to have its mortgage set up as a second mortgage on Tract II subject only to the first mortgage of Security Bank and Trust Company, Miami, Oklahoma.

31. As part of the foregoing and for the purpose of further securing the obligation sued upon in FDIC's Count I, the Defendants, John E. Painter and Evelyn S. Painter, husband and wife, made, executed and delivered to the order of the Bank, their certain Assignment of Real Estate Mortgage dated August 15, 1984, covering property located in Ottawa County, Oklahoma, and described as follows, to-wit:

The Northeast Quarter (NE/4) of the Southeast Quarter (SE/4) of Section Twelve (S12), Township Twenty-six North (26N), Range Twenty-three East (23E) of the Indian Meridian, Ottawa County, Oklahoma,

LESS:

The Northwest Quarter (NW/4) of the Northeast Quarter (NE/4) of the Northeast Quarter (NE/4) of the Southeast Quarter (SE/4) thereof.

This property is hereafter referred to as "Tract III".

(Admitted in Defendants' Answer)

32. Said Assignment of Mortgage relates to a Mortgage originally given by Mike True, Rebecca True, Delmar G. True and Myrle A. True, which original Mortgage is dated April 18, 1983, and recorded in Book 421 at Page 781 in the Office of the County Clerk, Ottawa County, Oklahoma. Mortgage tax was paid on the said original mortgage as receipted by endorsement on the face of the mortgage which mortgage was recorded as stated above and said Assignment of Mortgage was filed of record October 10, 1984, in Book 436 at Page 219 in the Office of the County Clerk of Ottawa County, Oklahoma.

33. Defendant, John E. Painter, has been receiving payments from the mortgagors, Mike True and Rebecca True, and has not paid these funds to either Farmers State Bank or to the FDIC.

34. As part of the foregoing and for the purpose of further securing the amounts sued upon in FDIC's Count I, the Defendants, John E. Painter and Evelyn S. Painter, made, executed and delivered unto the Bank their certain Security Agreement dated August 15, 1984, relating to collateral hereinafter described.

35. By virtue of the Security Agreement FDIC has an interest in and special ownership of the following hereinafter described property:

<u>ITEM</u>	<u>VALUE</u>
200 shares of Southland Energy Corp. stock	\$6,000.00
3195 shares of Midwestern Life Insurance stock	\$3,000.00
Gamble-Skogmo, Inc. Note/Bond with face value of \$5,000.00 and due the calendar year 2003	\$5,100.00

36. As set forth in FDIC's Count I, the Promissory Note is past due and in default. FDIC considers itself insecure and believes the prospect of payment and performance per the agreements is impaired. As provided by the terms of the Note, FDIC declares the entire indebtedness to be immediately due and payable as set forth in Count I, together with attorneys' fees and all costs necessary to enforce FDIC's security interest.

37. FDIC is entitled to the immediate possession of the property described above which the named Defendants wrongfully detain and FDIC is entitled to sell such property at public or private sale and is entitled to an Order of this Court foreclosing any and all right, title or interest in or to such

property which the Defendants might claim in same; provided, FDIC should be required to apply proceeds derived from such sale against the sums claimed due by FDIC.

38. This property was not taken in execution on any order or judgment against the Bank or FDIC, or for the payment of any tax, fine or amercement assessed against it, or by virtue of any order of delivery under the laws of the State of Oklahoma, or any mesne or final process issued against FDIC.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants, Mike True and Rebecca True, husband and wife; Delmar G. True, E.O. Holeman a/k/a Elza Holeman and Jane Doe Holeman, husband and wife; Charles Donald Mize, Jr. and Carrie J. Mize, husband and wife; and the heirs, executors, administrators, devisees, trustees and assigns, known and unknown immediate and remote of Charles Donald Mize, Sr. a/k/a C.D. Mize, deceased, are in default and hereby adjudged to be in default.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that certain assignment of real estate mortgage dated December 28, 1984, filed of record in the Delaware County Clerk's Office in Book 478 at Page 148 is hereby reformed to read that the real property is located in Section 28 instead of Section 25.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff have and recover judgment in personam against Defendants John E. Painter and Evelyn S. Painter in the principal sum of \$156,842.98 plus accrued interest of \$107,122.75 through September 11, 1990, plus interest accruing thereafter at the per diem rate of \$68.75 until paid together with a reasonable attorney's fee and costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that FDIC have and recover judgment foreclosing its first mortgage as against all defendants on the following described real property located in Delaware County, State of Oklahoma, to wit:

Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-eight (§28), Township Twenty-five North (25N), Range Twenty-two East (22E), containing forty (40) acres, more or less.

less and except:

The North Half (N/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-Eight (§28), Township Twenty-Five North (25N), Range Twenty-Two (22) East of the Indian Principal Base and Meridian in Delaware County, Oklahoma, containing 5 acres.

and

The South Half (S/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4) of the Southeast Quarter (SE/4) of Section Twenty-eight (§28), Township Twenty-five North (25N), Range Twenty-two East (22E) of the Indian Principle Base and Meridian in Delaware County, Oklahoma, and containing Five (5) acres, and subject to an easement for right of ingress and egress over a strip of land Thirty feet (30') in width the centerline of which is described as follows: Beginning at a point on the South line of said S/2, SE/4, SW/4, SE/4 South 89° 54' East a distance of 265 feet from the Southwest Corner thereof; thence North 04°21'30" East a distance of 330.44 feet to a point on the North line of said S/2, SE/4, SW/4, SE/4 South 89°53'30" East a distance of 290 feet from the Northwest Corner thereof.

and that any and all right, title and interest which any other persons have or claim to have, in or to said real estate and premises is subsequent, junior and inferior to the mortgage and lien of FDIC except as to the Ottawa County Treasurer and

Delaware County Treasurer for unpaid ad valorem real estate taxes, if any.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the mortgage and lien of Federal Deposit Insurance Corporation in its corporate capacity as holder of assets of the failed Farmers State Bank of Afton, Oklahoma, in the amounts hereinabove found and adjudged should be foreclosed and Special Execution and Order of Sale issue out of the Office of the District Court Clerk in this cause, directed to the Sheriff of said County or other duly authorized office of the Court to levy upon, advertise and sell, after due and legal appraisalment, the real estate and premises hereinabove described, subject to unpaid ad valorem taxes, if any, advancements by Plaintiff for taxes, insurance premiums, or expenses necessary for the preservation of the subject property, if any, and pay the proceeds of said sale to the Clerk of this Court, as provided by law, for application as follows:

- FIRST: To the payment of the costs herein accrued and accruing.
- SECOND: To the payment of the Ottawa and Delaware County Treasurer for unpaid ad valorem taxes, if any.
- THIRD: To the payment of the judgment and lien of the Plaintiff, Federal Deposit Insurance in its corporate capacity as holder of assets of the failed Farmers State Bank, Afton, Oklahoma, together with interest and attorney's fees in the amounts hereinabove set out.
- FOURTH: The balance to be paid into the Court pending further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of the said sale, the Defendants herein, and each of them, and all persons claiming by, through or under them since the commencement of this action, be forever barred, foreclosed and enjoined from asserting or claiming any right, title, interest, estate or equity of a redemption in or to said real estate and premises or any part thereof.

For all of which let execution issue.


UNITED STATES DISTRICT JUDGE

SEPARATE SIGNATURE PAGES ATTACHED HERETO

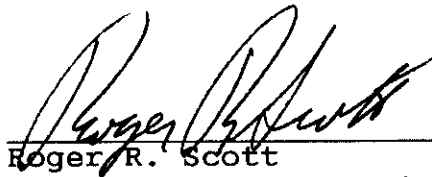
APPROVED:



Steven S. Mansell/OBA 10584
Attorney for Federal Deposit
Insurance Corporation

BUSH AND UNDERWOOD
Jamestown Office Park, Suite 200-W
3037 N.W. 63rd Street
Oklahoma City, Oklahoma 73116
Telephone: (405) 848-2600

APPROVED:



Roger R. Scott
Attorney for John Painter and
Evelyn Painter


525 S. Main
1111 ParkCentre
Tulsa, OK 74103

APPROVED:



John E. Painter

APPROVED:



Richard D. James
Attorney for Security Bank and
Trust Company, Miami, Oklahoma

WALLACE, OWENS, LANDERS,
GEE, MORROW, WILLSON, WATSON,
JAMES & COINER

21 South Main
P.O. Box 1168
Miami, OK 74355

APPROVED:

Donna L. Smith

Donna L. Smith, OBA #12865
Attorney for Elmer Robison and
Pauline Robison

LOGAN, LOWRY, JOHNSTON, SWITZER,
WEST & MCGEADY
P.O. Box 558
Vinita, OK 74301

APPROVED:

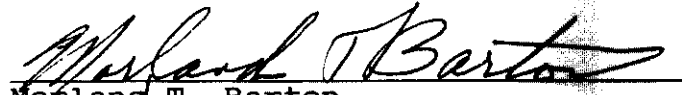


D. A. REHEARD

Attorney for Delaware County
Treasurer and the Board of
County Commissioners of Delaware
County, Oklahoma

Assistant District Attorney
Delaware County Courthouse
Jay, OK 74346

APPROVED:

A handwritten signature in dark ink, appearing to read "Morlane T. Barton", is written over a horizontal line.

Morlane T. Barton
Attorney for Ottawa County
Treasurer and the Board of County
Commissioners of Ottawa County,
Oklahoma

Assistant District Attorney
Ottawa County Courthouse
Miami, OK 74354

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MEMOREX TELEX CORPORATION,

Plaintiff,

vs.

No. 90-C-511-E

GENERAL ELECTRIC COMPANY,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion to Dismiss. Having reviewed the law and considered the arguments of the parties, the Court finds that Defendant's motion should be granted. All other motions and applications on file herein are, therefore, moot.

The pivotal facts in this case are not in dispute. Thus, the Defendant's motion is properly before the Court. Griffin v. United States, 537 F.2d 1130 (Emer.Ct.App. 1976), cert. den. 429 U.S. 919, 97 S.Ct. 313, 50 L.Ed.2d 286.

The Court finds that under applicable New York law, Defendant did not breach any of the express terms of the License Agreement as amended by the letter dated September 30, 1981 (Exhibit "B" to Plaintiff's Complaint). The Court finds that the express terms are unambiguous and declines to reach beyond those terms to infer different or additional terms. Collard v. Incorporated Village of Flower Hill, 52 N.Y.2d 594, 604, 439 N.Y.S.2d 326, 421 N.E.2d 818, 823 (1981). Accordingly, Count I of Plaintiff's Complaint, which articulates a breach of contract theory, should be dismissed.

The Court further finds that Plaintiff, as licensee, is not entitled to reimbursement for royalties paid prior to a declaration of the underlying patent's invalidity. Plaintiff contends that where a patent is subsequently adjudged invalid, the licensee of the patent licensing agreement is entitled, under state and common law theories, to restitution for Defendant's unjust enrichment of all royalties paid pursuant to the agreement.

As the Supreme Court has stated, cases arising in the patent law arena often require a balancing of "the competing demands" of the common law of contracts and federal patent law. Lear, Inc. v. Adkins, 395 U.S. 653, 668, 89 S.Ct. 1902, 1910, 23 L.Ed.2d 610 (1969). In Lear, the Supreme Court was asked to reconsider the doctrine of licensee estoppel which barred licensees from challenging the validity of a patent as a defense to licensor's action, sounding in contract law, for royalty payments. The Court found that in that situation, contract theory must give way to the overriding federal policy favoring the free circulation of all ideas in the public domain, "unless they are protected by a valid patent." Id.

In Troxel Manufacturing Co. v. Schwinn Bicycle Co., 465 F.2d 1253 (1972) the Sixth Circuit applied the Lear reasoning to a case which is analogous to the case at bar. In Troxel patent licensees sought to recoup all royalties paid under a patent which was subsequently declared invalid. The Court held that, absent fraud or similar misconduct, licensor should not be liable for royalties already paid under an agreement. As the Court explained:

A rule that licensees can recover all royalties paid on a patent which later is held to be invalid would do far more than "unmuzzle" licensees. It would give the licensee the advantage of a "heads-I-win, tails-you-lose" option. Lear states that it is in the public interest to encourage an early adjudication of invalidity of patents. Application of the holding of the District Court could defeat early adjudication of invalidity and encourage tardy and marginal litigation. If the licenses could recover royalties paid (subject to any statute of limitations) on the basis of an adjudication of invalidity accomplished by another litigant, without incurring the expense or trouble of litigation, there would be less inducement for him to challenge the patent and thus remove an invalid patent from the competitive scene. He would be more likely to wait for somebody else to battle the issue because he would have nothing to lose by the delay.

Id. at 1257. Additionally, the Court stated, a rule which afforded licensees total reimbursement would discourage patentees from licensing their patents. Since the patentee would remain contingently liable for the royalties he received under a licensing agreement, he would have little incentive to enter into such agreements. Id. Finally, the Court said, a rule compelling reimbursement would discourage citizens from using the patent system, which is the instrument the government has fashioned to encourage invention and, simultaneously, its disclosure and use in the public domain. Id. at 1258.

This Court finds the Troxel analysis persuasive. Balancing the equities in the present case the Court finds that Plaintiff has no legal claim for reimbursement of royalty payments. Count II of Plaintiff's Complaint should be dismissed for failure to state a

claim upon which relief may be granted.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is granted. The parties are ordered to prepare arguments and calculations on the issue of costs and attorney fees to be submitted to the Court on or before December 2, 1990.

ORDERED this 15th day of November, 1990.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NORTHERN PIPELINE, LTD., a)
California limited partnership;)
FALLON COUNTY PIPELINE, LTD.,)
a California limited)
partnership; MONTANA PIPELINE,)
LTD., a California limited)
partnership; SODA CREEK)
PIPELINE, LTD., a California)
limited partnership; AMERICA)
ENERGY, INC., a California)
corporation;)

Plaintiffs,)

vs.)

INTERSEARCH CORPORATION, an)
Oklahoma corporation;)
INTERSEARCH GAS CORPORATION, an)
Oklahoma corporation; HILLTOP)
PIPELINE SYSTEMS, an entity,)

Defendants.)

FILED

NOV 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Case No. 90-C-0075-E

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiffs, Soda Creek Pipeline and American Energy, Inc. and hereby dismiss their claim against the Defendants Intersearch Corporation, Intersearch Gas Corporation and Hilltop Pipeline Systems with prejudice.

Respectfully submitted,

HOWARD AND WIDDOWS, P.C.

By: 

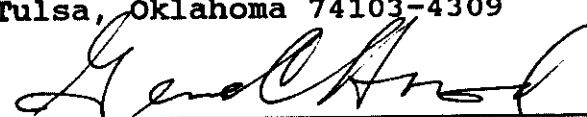
Gene C. Howard
O.B.A.#4398
2021 South Lewis, Suite 570
Tulsa, Oklahoma 74104
(918) 744-7440

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November,
19____, a true and correct copy of the foregoing was mailed with
postage prepaid thereon to the following:

Richard D. Gibbons
Gibbons and Associates
1611 South Harvard
Tulsa, Oklahoma 74112

Michael T. Keester
Jones, Givens, Gotcher & Bogan
3800 First National Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4309


Gene C. Howard

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE EMERSON WEARE; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

NOV 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-694-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10 day
of Nov, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Joe Emerson Weare, appears not, but
makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, Joe Emerson Weare, was
served with Summons and Complaint on September 28, 1990; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on August 17, 1990; and that
Defendant, Board of County Commissioners, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on August 21, 1990.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on September 6, 1990; that the Defendant, Joe Emerson Weare, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-Six (26), Block Seven (7), of the Amended Plat of Blocks 5, 6, 7 and 8, GARDEN CITY, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 6, 1985, the Defendant, Joe Emerson Weare, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$28,900.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Joe Emerson Weare, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 6, 1985, covering the above-described property. Said mortgage was recorded on September 9, 1985, in Book 4890, Page 276, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Joe Emerson Weare, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Joe Emerson Weare, is indebted to the Plaintiff in the principal sum of \$28,397.68, plus interest at the rate of 11.5 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$23.92 (\$20.00 docket fees, \$3.92 fees for service of Summons and Complaint).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Joe Emerson Weare, in the principal sum of \$28,397.68, plus interest at the rate of 11.5 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.28% percent per annum until paid, plus the costs of this action in the amount of \$23.92 (\$20.00 docket fees, \$3.92 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

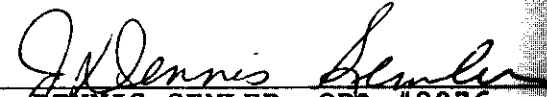
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-694-C

PP/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BONNIE MASTERSON

Plaintiff(s)

vs.

S.G.D. CORPORATION

Defendant(s)

No. 90-C-701-C

FILED
NOV 16 1990

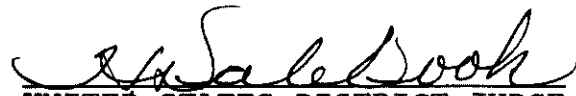
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendant, having filed it's petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 30 days of final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 10 day of November,
1990.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MOSE STEPHENS, JR.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 90-C-952-C
(No. 86-CR-112-C)

ORDER

Before the Court is a motion pursuant to 28 U.S.C. §2255 to vacate, set aside, or correct sentence filed by defendant Mose Stephens, Jr.

Defendant brings this motion asserting ineffective assistance of counsel. He states there are five specific areas where his procedural rights, statutory rights and constitutional rights were violated due to counsel not addressing the issues. For specificity, defendant attaches two Tenth Circuit Opinions.

Defendant does not set forth any factual bases to support his claim under §2255. Defendant merely concludes his constitutional rights have been violated by general reference to prior circuit decisions relating to his criminal case.

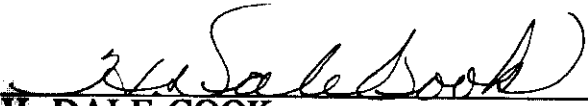
Defendant's claim is repetitious. Defendant filed similar claims in a previous motion under §2255 which were denied by this Court on September 20, 1989.

4/334

Accordingly, defendant Mose Stephens, Jr.'s motion filed pursuant to 28 U.S.C. §2255 is hereby denied.

Since defendant's motion is clearly frivolous and repetitious, the Court denies defendant's request to proceed in forma pauperis.

IT IS SO ORDERED this 10th day of November, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

entered

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

GENERAL ACCIDENT INSURANCE
COMPANY OF AMERICA,

Plaintiff,

vs.

No. 88-C-254-P

FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, a national
banking association, as
successor personal
representative of the estate
of F. PAUL THIEMAN, JR.,
deceased; and, NORMA
APPLEGATE, successor trustee
of the Gladys M. Thieman Trust,
and F. Paul Thieman and Gladys
M. Thieman Trust,

Defendants.

FILED
IN OPEN COURT

NOV 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

For the reasons set forth on the record at the hearing held on
November 16, 1990, the Court ruled as follows:

1. Defendants' attorney fee request is DENIED.
2. Plaintiff's request for pre-judgment interest is DENIED.
3. Plaintiff's request for entry of a monetary judgment is
GRANTED.
4. Plaintiff's request for post-judgment interest is GRANTED
in part and DENIED in part.

5. Plaintiff's motion to retax cost is GRANTED in part and DENIED in part, and \$162.25 is added to the Clerk's award for a total amount of \$762.30.

All findings and conclusions as set forth on the record are hereby incorporated by reference.

IT IS SO ORDERED this 16th day of November, 1990.



LAYN R. PHILLIPS
United States District Judge

entered

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

MOSE STEPHENS, JR.,
Defendant.

No. 90-C-952-C
(No. 86-CR-112-C)

FILED

NOV 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court for its consideration is the motion of defendant Mose Stephens, Jr., for the judge to recuse himself from consideration of defendant's Motion to Vacate sentence under 28 U.S.C. §2255.

The defendant has previously filed an identical request which was denied by Order of the Court on June 16, 1989. Defendant has raised no new factual bases for reconsideration of that previous decision. Defendant's motion is repetitious, and accordingly is DENIED.

IT IS SO ORDERED this 10th day of November, 1990.


H. DALE COOK

Chief Judge, U. S. District Court

3/333

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

HOMEWARD BOUND, INC.,
et. al.,

Plaintiffs,

vs.

THE HISSOM MEMORIAL CENTER,
et. al.,

Defendants.

Case. No. 85-C-437-E

JUDGMENT

In accordance with the Order Fixing Attorney Expenses and Costs entered June 18, 1990, the Court hereby enters judgment in favor of plaintiffs' counsel, Public Interest Law Center of Philadelphia in the amount of \$146,952.00.

Entered this 16th day of November, 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1988

U.S. DISTRICT COURT

JAMES D. CALHOUN and JOAN I.
CALHOUN, individually and as
husband and wife,

Plaintiffs,

vs.

No. 89-C-768-C

WAL-MART STORES, INC., a
Delaware corporation,

Defendant.

DISMISSAL BY STIPULATION WITH PREJUDICE

COME NOW the Plaintiffs, James D. Calhoun and Joan I. Calhoun, by and through their attorneys, James E. Frasier and Everett R. Bennett, Jr., of the law firm of Frasier & Frasier, and the Defendant, Wal-Mart Stores, Inc., by and through its attorney, Steven E. Holden of the law firm of Best, Sharp, Holden, Sheridan & Stritzke, pursuant to Rule 41(A)(ii), and hereby stipulate and dismiss the above-styled action WITH PREJUDICE to the refiling of this case at a later date. Any and all costs at this time shall be borne by each of the respective parties.

FRASIER & FRASIER

By: _____
Everett Bennett, Jr.

**BEST, SHARP, HOLDEN, SHERIDAN
& STRITZKE**

By: _____
Steven E. Holden / *Barry A. Farber*

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE)
CORPORATION, in its corporate)
capacity,)
)
Plaintiff,)
)
vs.)
)
SERVICE STEEL CO., INC., a)
corporation, ROBERT B. MANTON,)
an individual, and FIRST)
METALS, INC., a corporation,)
)
Defendants.)

Case No. 90-C-558-B

STIPULATION AND ORDER DISMISSING
DEFENDANT, FIRST METALS, INC.

COME NOW the Plaintiffs by and through their attorney,
James Vogt and the Defendant, First Metals, Inc., by and
through its attorney, Thomas F. Birmingham, and hereby
stipulate that the above captioned case is to be dismissed
with prejudice as against the Defendant, First Metals, Inc.,
said dismissal is not to prejudice in any manner the
continuation of the Plaintiff's claim against any of the
remaining defendants in the above-styled and numbered action.

IT IS SO ORDERED.

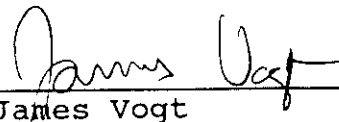
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

REYNOLDS & RIDINGS

By


James Vogt

2808 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-8131

Attorney for Plaintiff

UNGERMAN & IOLA

By 

Thomas F. Birmingham
1323 East 71st Street
P. O. Box 701917
Tulsa, Oklahoma 74170-1917
(918) 495-0550

Attorney for Defendant, **First**
Metals, Inc.

entered

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

GENERAL ACCIDENT INSURANCE
COMPANY OF AMERICA,

Plaintiff,

vs.

No. 88-C-254-P

FIRST NATIONAL BANK AND TRUST
COMPANY OF TULSA, a national
banking association, as
successor personal
representative of the estate
of F. PAUL THIEMAN, JR.,
deceased; and, NORMA
APPLEGATE, successor trustee
of the Gladys M. Thieman Trust,
and F. Paul Thieman and Gladys
M. Thieman Trust,

Defendants.

FILED
IN OPEN COURT

NOV 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

This matter came before the Court on motions to amend or alter judgment filed by Applegate and General Accident, and various motions to retax costs.

The Court finds that the December 1, 1987, probate "Order Approving Settlement of Creditor's Claim" does not trigger the exclusionary language of General Accident's Professional Liability Policy, and accordingly enters declaratory judgment against plaintiff and in favor of defendants.

The Court further enters a money judgment against plaintiff and in favor of defendant First National Bank and Trust Company, as successor personal representative of the estate of F. Paul Thieman,

Jr., deceased, in the amount of \$325,000 plus post-judgment interest at the rate of 7.95% from September 13, 1990. The Court further awards Applegate costs in the amount of \$762.30, and denies Applegate's request for attorney fees. Upon application of plaintiff, the Court sets Supersedeas Bond in the sum of \$400,000.00, grants plaintiff thirty days within which to file a corporate Supersedeas Bond in the stated amount, and stays execution of the judgment for thirty days pending filing of said corporate Supersedeas Bond.

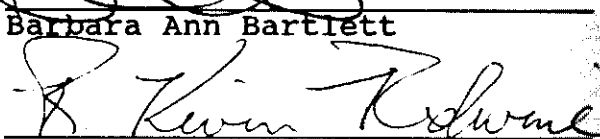
IT IS SO ORDERED this 16th day of November, 1990.


LAYN R. PHILLIPS
United States District Judge

Approved as to form:


Joseph A. Sharp


Barbara Ann Bartlett


R. Kevin Redwine

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

CLERK
U.S. DISTRICT COURT

THE HOME-STAKE OIL & GAS
COMPANY, THE HOME-STAKE ROYALTY
CORPORATION and ROBERT C.
SIMPSON,

Plaintiffs,

vs.

Case No. 90-C-396-B

ROBERT S. TRIPPET, CAMERON DEE
SEWELL, RUSSELL S. NORVELL,
R. KENNETH SPARKS, JOHN R.
SIMPSON, III, AGO COMPANY,
AGR CORPORATION, and AGO/AGR
Limited Partnership,

Defendants.

TENDER OF PARTIAL JUDGMENT AMOUNT TO COURT CLERK
BY DEFENDANTS ROBERT S. TRIPPET, CAMERON D. SEWELL,
RUSSELL S. NORVELL, R. KENNETH SPARKS, JOHN R. SIMPSON, III,
AGO COMPANY, AGR CORPORATION AND AGO/AGR LIMITED PARTNERSHIP

The Defendants, Robert S. Trippet, Cameron D. Sewell, Russell S. Norvell, R. Kenneth Sparks, John R. Simpson, III, AGO Company, AGR Corporation and AGO/AGR Limited Partnership, pursuant to Judgment and Order of the Court entered October 26, 1990, hereby tender to the Clerk of this Court the sum of \$39,421.52, which represents their portion of the Judgment Amount, in the form of a check, a copy of which is attached hereto as Exhibit "A".

Patricia Ledvina Himes

James M. Sturdivant, OBA No. 8723

Patrick O. Waddel, OBA No. 9254

Patricia Ledvina Himes, OBA No. 5331

GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR DEFENDANT
CAMERON D. SEWELL

Receipt of the sum of \$39,421.52 in the form of a check is
acknowledged by the Clerk of this Court.

71.7 miles
Clerk, United States District Court,
Northern District of Oklahoma

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of November, 1990, true
and correct copies of the foregoing instrument were mailed, with
proper postage fully prepaid thereon, to:

John S. Athens
CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103

George W. Bramblett, Jr.
Joseph G. Werner
HAYNES & BOONE
3100 NCNB Plaza
901 Main Street
Dallas, Texas 75202-3714

ATTORNEYS FOR PLAINTIFFS

Patricia Ledvina Himes
Patricia Ledvina Himes

AGO/AGR, LTD.
PH: 712-4380
1717 MAIN STREET, SUITE 4400
DALLAS, TEXAS 75201

11/15 19 90 0139

88-1874
1119

Clerk of the Court for the
Northern District of Oklahoma

PAY TO THE ORDER OF \$ 39,421.52

Thirty-nine Thousand Four Hundred Twenty-one & 52/100

UB UNITED BANK N.A.
P.O. BOX 388 - (214) 227-2131
LANCASTER, TEXAS 75146-0388

MEMO NO. 90-C-396-B

11119187481 130064711 0139

88-1874
1119

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

COMMUNITY FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Plaintiff,

vs.

No. 89-C-354-B ✓

M. MAYERS & COMPANY, an
Oklahoma corporation, a
general partner of KENSINGTON
TOWER PARTNERSHIP, an Oklahoma
general partnership, and
NATURAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendants,

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Savings Bank,

Intervenor.

COMMUNITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Plaintiff,

v.

No. 89-C-355-B

NATIONAL ROYALTY CORPORATION,
an Oklahoma corporation,

Defendant,

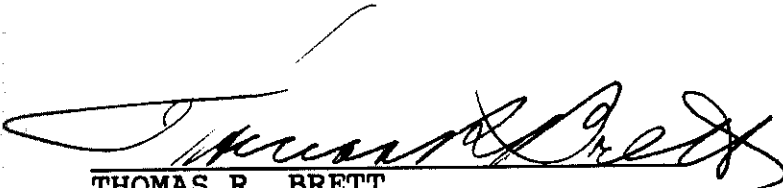
FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION, as
Receiver for First Oklahoma
Savings Bank,

Intervenor.

J U D G M E N T

In accordance with the Order entered November 15, 1990, Judgment is hereby entered in favor of Plaintiff, Local America Bank of Tulsa and against the Defendants M. Mayers & Company and National Royalty Corporation in the amount of \$99,419.18 together with interest thereon through and including August 3, 1988, in the amount of \$460.61 together with per diem interest thereafter at the rate of \$32.60 and post-judgment interest from the date hereof at the rate of 7.51% (28 U.S.C. §1961). Each party is to pay its own attorneys' fees. Costs are assessed against Defendants M. Mayers & Company and National Royalty, if timely applied for under Local Rule 6.

DATED this 16th day of November, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE